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SUBMISSION
OF
CANADIAN PACIFIC RAILWAY COMPANY
TO THE
ROYAL COMMISSION ON
TRANSPORTATION

PART I

MONTREAL, QUE.,
OCTOBER, 1949

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SUBMISSION OF
CANADIAN PACIFIC RAILWAY COMPANY
(Second Printing)

PART I

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SUBMISSION OF
CANADIAN PACIFIC RAILWAY COMPANY

PART I

Mr. Chairman and Commissioners:-

The following submission is made on behalf of Canadian Pacific Railway Company. For convenience, the outline of submissions dated 27th May, 1949, is repeated and where deemed necessary, additional submissions and elaboration follow the numbered paragraphs of the Outline Submission.

OUTLINE SUBMISSION

"1. Canadian Pacific Railway Company welcomes the opportunity afforded to it, as a result of the appointment of your Commission, to express its views upon the many important aspects of the national transportation problem which your Commission has under consideration. The essential problem can, in our view, be simply stated, that is to say, how the people of Canada can be furnished adequate and modern transportation services at the lowest possible cost to the nation and without unnecessary or uneconomic consumption of labour and materials.

2. No transportation service can be said to be adequate unless it is so arranged and its rate structure so framed that the traffic of the country is moved freely and the agricultural and industrial development of the country maintained and encouraged. The problem is definitely not one as to which part of the country should obtain special treatment as compared with another part nor is it one of the extent to which the railways can be made the medium by which artificial and uneconomic development of certain parts of the country can be achieved at the expense of other parts. Transportation is of national and not merely sectional importance.

3. The problem involves, in our view, the need of ensuring that the railways of this country be made financially sound and be able to provide adequate and modern railway services. Railways, at least those privately owned, must be able to attract the necessary capital to their enterprises in order that they may keep pace with the need for expansion and modernization of their services and for the improvements which are required to ensure that the products of industry may find their markets both at home and abroad.

4. The suggestions contained in this submission by Canadian Pacific looking to a solution of these problems involve basically the assumption that it is in the best interest of Canada that Canadian Pacific is to continue to function as a privately owned system.

"5. Regulation of public utilities, including railway utilities, is necessary. At the same time, in the submission of this Company, regulation should neither be sought for its own sake nor should it be carried to the point of oppression.

6. If regulation is carried too far and, above all, if the problem is allowed to become one hedged about with political controversy and subject to political solutions, private enterprise cannot perform its function and must inevitably give way to socialization of the enterprise.

7. It is equally important to recognize that regulation should be performed by a tribunal administrative in character but wise and judicial in its decisions, free from the stultifying effect of having its decisions subject to review and appeal by a political tribunal. Parliament has of course the power to legislate when legislation becomes necessary but it is, in the view of the Canadian Pacific, extremely important that neither Parliament nor the Governor-in-Council should provide the arenas in which questions primarily for the administrative tribunal are argued and disposed of.

8. A number of proposals which are alleged to offer an answer to the transportation problem will be dealt with in detail at a later stage of the submissions of the Company to your Commission. Part II of this submission will outline the position of this Company with regard to such specific proposals as are made in the outline submissions of the several intervening provinces."

FURTHER SUBMISSIONS

Part II of this submission is expanded to give in some detail the considerations and material deemed by Canadian Pacific to be relevant to the proposals made by the intervening provinces in their written submissions, as well as at hearings held by your Commission. Part II is elaborated also to deal with certain complaints and proposals by various parties and their witnesses during the hearings of your Commission.

In view of the large number of briefs submitted and the variety of subjects dealt with, the elaboration of Part II will be arranged so as to deal with specific subjects under appropriate headings.

OUTLINE SUBMISSION

9. Such proposals, while often made in an honest belief that they are in fact adequate solutions of the problem, merely beg the real question. In many cases such proposals only create new problems more serious than those for which they are intended to provide a remedy.

10. The system of rate regulation under the Railway Act has stood the test of time. It has enabled a remarkably high degree of national prosperity to be attained. The machinery provided by the Act, as it has been administered and interpreted by the Board subject to appeal on matters of law and jurisdiction to the Supreme Court, has provided a rate structure which will move the maximum volume of traffic of all kinds.

11. The railways themselves have at least an equal interest with the shipping public in maintaining the lowest possible level of rates. It is not, however, desirable that the railways should perform uneconomical transportation services merely to create artificial industrial or other growth in areas where the geographical disadvantages are such as to inhibit the economical development of certain industries.

12. Many such proposals as have been made overlook the extent to which the railway freight rate structure has been successful in developing the commerce of this country under what in many cases might have been considered insuperable difficulties. The rate-making system under which this has been possible is one which, while designed to provide revenues sufficient to meet the cost of transportation as a whole, recognizes that all classifications of traffic cannot contribute equally to that overall cost. This principle of rate-making involves contributions by different classes of commodities according to 'what the traffic will bear'. That is not to say that every type of traffic is charged all that it will bear, but that it is recognized that to apply the same rate per ton for similar movements of all types of traffic would produce charges so high on certain types of traffic as to inhibit their movement. The principle is more correctly stated as being one of charging no more than any type of traffic will bear, and no less on any type of traffic than will cover out-of-pocket costs, plus some contribution to those costs of transportation which do not vary directly with the volume of traffic, while maintaining all rates at the lowest levels needed to produce the revenues which the railways require if they are to furnish the nation with adequate service.

13. No system of rate-making should, in our submission, be adopted which contemplates the principle of transportation subsidies because these tend to encourage the uneconomic use of transportation services. Canadian Pacific does not seek the repeal of the Maritime Freight Rates Act but it does submit that such legislation should not be extended to other areas of Canada. That Act tends towards rigidity in the freight rate structure.

"14. Canadian Pacific points with satisfaction to the role it has filled in the development of this country. It takes pride in the fact that it has, together with the other railways in Canada, provided an efficient transportation service at a cost which compares favourably with that of any railway company in the world.

15. The main line of the Company connecting the existing railway system of Canada with the Pacific was completed in 1885 and concurrently or shortly thereafter lines were acquired or built to extend its services to the ports of Montreal and the Atlantic Seaboard. From the outset branch lines were built to open up the country to settlement. The period of extensive branch line construction ended about 1930.

16. As part of its undertaking Canadian Pacific has provided a nationwide communication network, an hotel system, coastal steamship services on the Atlantic and Pacific, and ocean steamship services. Since 1942 it has provided air transportation to many sections of Canada and this year will inaugurate air service across the Pacific to Australia and New Zealand and to China and Japan.

17. To develop the country and to attract settlers the Company for many years was in the forefront with immigration services and irrigation projects. Its present immigration services are being actively used in bringing new settlers to Canada in conjunction with the Dominion Immigration Department. The Company has made investments in a number of activities which have assisted the development of the industrial and natural resources of Canada."

FURTHER SUBMISSIONS

A concise elaboration of the history of Canadian Pacific Railway and of Canadian Pacific Railway Company may be found in the Appendix at pp. 14-26.

OUTLINE SUBMISSION

"18. The organization of the administrative forces of the Company is such that local, regional and national transportation needs may be met. The railway of Canadian Pacific with its operating regions, districts, divisions and sub-divisions is outlined on the map at page 1 of the Appendix. A table of the mileage operated by the Company is at page 2 of the Appendix. A map showing the traffic density by sub-divisions on the railway in 1948 is found at page 3 of the Appendix.

19. The density map shows the extent to which the Canadian Pacific railway consists of low density lines. Costs per unit of traffic within certain limits tend to increase as the density decreases and the continued operation of many branch lines is justified only because they act as feeders to the higher density main lines.

"20. Notwithstanding the general upward trend of wage and material costs, the average revenue received by Canadian Pacific for hauling one ton of freight one mile was 1.2¢ in 1885 and 1.13¢ in 1948. In terms of real purchasing power the cost to the shipper today is less than half that of 1885. These facts are apparent from the chart at page 4 of the Appendix. This reduction in rail transportation costs was achieved not only as a result of increased traffic volume but also as a result of a more efficient use by Canadian Pacific of its plant and equipment. The increase in efficiency has been possible because heavy capital expenditures have been made by the Company.

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21. While the Canadian Pacific railway system is to a very great extent the same as originally surveyed and constructed, the capacity and efficiency of the plant has been increased by improved roadbeds, heavier rail, greater capacity of freight cars and locomotives, installation of automatic signals and improvements and additions to terminal facilities. These improvements have taken place gradually but the development of Canada and the demands for improved service require that very substantial capital projects be undertaken by Canadian Pacific in the immediate future."

FURTHER SUBMISSIONS

Canadian Pacific, in building its railway plant, followed conservative policies in construction and finance. The main line of Canadian Pacific as completed in 1885 has not been relocated except for short distances where major improvements could be made by such relocation, reducing grades, curvatures and mileage. As Canada grew, Canadian Pacific not only extended its lines to serve new sections of the country, but also made extensive improvements to older property to increase capacity and improve operating efficiency. As branch lines were added to the Company's system, the flow of traffic on the more important lines was increased. Accordingly, terminal facilities were enlarged and extended, double track constructed, heavier and improved rail and ballast laid, automatic signals installed, locomotives and freight cars of greater capacity purchased and many other similar improvements were made. The effect of these improvements is indicated in the Digest of Canadian Pacific Development, Appendix p. 27. In skeleton form the following is a record of the growth of the Company over the past half century:

Year	Mileage Operated	LOCOMOTIVES		Revenue Freight Ton Miles (000)
		No. of Units	Total Tractive Effort (lbs)	
1898	6681.2	644	9,982,000	2,142,320
Index (1898 = 1)	1.0	1.0	1.0	1.0
1923	13,123.4	2255	72,469,905	14,274,462
Index	2.0	3.5	7.2	6.7
1948	17,032.7	1831	73,724,250	25,218,400
Index	2.6	2.9	7.4	12.2

Thus, over this fifty-year period while the facilities of the railway as measured by miles of road and number of locomotives were expanded from $2\frac{1}{2}$ to 3 times, tractive effort of locomotives increased sevenfold and the freight traffic handled increased twelvefold. Reference to the table at p. 5 of the Appendix will show how, over the same period, the revenue per ton mile in terms of constant purchasing power declined in 1948 to less than one-half of what it was in 1898. However, it should be stressed that revenue in 1948 was inadequate to maintain the Company in a sound position, although the additional revenues required would not substantially change the relationship between 1898 and the present.

To finance the additions and betterments which made possible these improvements in its ability to handle traffic, Canadian Pacific has had to secure large sums of additional capital funds. While these funds were obtained in part by the sale of equity stock and fixed interest obligations, a considerable amount was reinvestment of net income and funds made available through depreciation charges. The Company, from an early stage in its development, followed a policy of reinvesting, rather than distributing to stockholders, substantial portions of its net earnings.

The fact that Canadian Pacific was able to continue on a sound financial basis when other major railways in Canada became insolvent is in no small measure due to the adoption of conservative policies in construction and finance. The result

is that Canadian Pacific has been able to furnish efficient and economical transportation service to Canada in peace and in war.

Throughout the depression, war and post-war periods extending over the past twenty years, however, Canadian Pacific has been finding it increasingly difficult to continue the desirable policies which it had previously followed. During the 1930's funds for undertaking any extensive program of capital improvements were not available, and in any event traffic levels of those years would not have justified them. In the war years, the Company enjoyed a relatively satisfactory level of net railway earnings, but shortages of labour, materials and equipment prevented the possibility of carrying out any improvement program other than works of most urgent and immediate necessity. In the post-war period, Canadian Pacific has been caught between the millstones of sharply rising costs and revenues held down by rates close to prewar levels. As a result, net railway earnings have been insufficient either to provide the funds required for reinvestment in the property or to attract the necessary amount of new capital to the enterprise.

While the era of branch line construction which ended in the late 1920's is not likely to recur, Canadian Pacific has a continuing need for funds to enlarge and improve its property in keeping with changing conditions. Terminals and freight sheds must be redesigned and relocated because of industrial growth. Ability to move an increasing volume of traffic more expeditiously requires extensive signal installations. Track standards must be improved with heavier rail, and better ballast. New and improved types of motive power and equipment have been developed and are required to handle increased traffic more efficiently.

Evidence was given by Mr. N. R. Crump and Mr. W. A. Newman in the 20% Freight Rates Case before the Board of Transport Commissioners in January and February, 1949, relating to the anticipated requirements of the Company in the five-year period 1950-1954. (See 20% Case, Volume 809, pp. 1290-1385; 1434-1560; Volume 812, pp. 2388-2429).

This evidence outlined a program involving capital expenditures for roadway property and equipment averaging some \$75,000,000 annually. Mr. Crump, at p. 1296 of the transcript in the 20% Case, stated that while the capital expenditure projects were not to be treated as projects to which the Company was definitely committed, they were the minimum of what the Company must undertake if it was to provide for the increasing requirements of the public service. These expenditures included:-

Replacement of Worn Out Facilities.

As railway property becomes worn out it must be replaced in order that service can be maintained. Under normal conditions annual depreciation accruals should provide for the replacement in kind of worn out depreciable property such as rolling stock, bridges, buildings and the like. However, under existing conditions there has been such a marked change in price level that there is a wide gap between the cost of new property and the original cost of the old property on which depreciation has been accrued. Thus, additional funds are required to bridge this gap in order to maintain even a property of unchanged capacity.

Improvements in Service.

The quickening tempo of business brought about by increased specialization, faster and larger scale production and high costs of labour and material has accentuated the desire to keep inventory low and turnover high. To meet these changing needs of commerce, in the face of growing competition from other forms of

transport, Canadian Pacific must be prepared to render the kind of service required. To do so it must modernize existing facilities and secure new tools.

Economies in Operation.

Canadian Pacific is today confronted with labour and material costs higher than ever before in its history. In an endeavour to offset these higher costs and to avoid their full effect being passed on to its customers, Canadian Pacific must employ new materials and methods wherever possible. The benefit of technological improvements must be obtained. This will entail the expenditure of a substantial amount of capital funds.

Expansion to Meet Growing National Requirements.

Apart from consideration of ways and means to handle present traffic more expeditiously and economically, the growth of Canada has to be taken into account. Currently the population of the Dominion is increasing by approximately 300,000 persons annually. The long term trend indicates that the normal volume of freight traffic handled by Canadian Pacific averages 1,500 revenue ton miles per person per year. Consequently, Canadian Pacific is faced with a potential annual traffic growth of 450,000,000 revenue freight ton miles. This will necessitate enlargements of the railway plant. This, as Mr. Newman explained in his evidence in the 20% Case, does not mean that the increase in traffic due to increase in population will necessarily be imposed upon the present high traffic volume. It does mean, however, that the normal average volume of traffic will increase with the population and the railway plant and equipment must likewise have increased capacity. Mr. Newman explained, p. 1453 of the transcript in the 20% Case, that neither equipment nor plant should be geared to the foreseeable

maximum volume of traffic, but to the foreseeable or probable average volume of traffic, so that in peak years nearly maximum utilization could be obtained and in below average years no large excess of capacity would be present.

Canadian Pacific is confronted with the necessity for securing substantial amounts of new capital. The railway plant and facilities are not static but must grow with Canada and keep in step with the times. If the Company cannot attract capital for these purposes, it will become sterile to the detriment of the nation. Adequate facilities and equipment are essential for efficient service and economical operation. If these are not provided the inevitable result must be either deterioration in service or higher unit costs of operation or both. The Company must be assured of a level of rates which will afford the Company a fair measure of net earnings each year, in order that its credit position may be restored. It can then secure the capital funds required and under these conditions, is confident of its ability to render to the nation in the future, as it has in the past, efficient low cost transportation service.

Mr. L. B. Unwin, Vice-President of Finance of the Company, and Mr. Northey Jones, a partner in the firm of Morgan Stanley & Company in New York, gave evidence as to the desirable way in which the improvement program described by Messrs. Crump and Newman should be financed. Mr. Unwin gave evidence at pp. 2435-6 that the program would require \$90,000,000 of financing per annum to cover the new program and maturing obligations and at pp. 2439-40 he gave his opinion that it was desirable that this should be financed to the extent of at least 60% by issues of ordinary capital stock. He pointed out at p. 2440 that in view of the present condition of the Company it is not possible to finance by new stock issues.

Mr. Northey Jones, in giving evidence at pp. 2559-61, expressed a similar opinion.

It is of course extremely difficult to estimate what economies can be achieved by such a program of capital expenditures. (See evidence of Mr. Crump, p. 1339 of the transcript in the 20% Case). Moreover, as Mr. Newman pointed out at p. 1472 of the transcript in that Case, it cannot be expected that economies from improvements will be fully effective immediately. Any estimate of the amount of savings from a program of improvements of this kind must be accepted with the greatest reserve. It must of course assume a continuation of the present level of unit costs for labour and materials and the present trend of the volume of traffic. For this and other reasons it must in its very nature be considered to be at best an approximation of anticipated savings. Subject to these reservations an estimate has nevertheless been made.

It must be borne in mind that the entire program amounting to about \$400,000,000 over a five year period is by no means all likely to produce operating savings. For example, the purchase of equipment consisting of freight cars and passenger cars to restore worn out work capacity and to meet expanding national requirements upon which no operating savings can be seen, amounts to slightly more than \$195,000,000. By restoration of work capacity is meant the purchase of sufficient equipment to maintain the capacity of the equipment wearing out from time to time and which must be replaced during the period. By expanding national requirement is meant the growth in total capacity required to meet the increased traffic due to population growth which was referred to by Mr. Newman in his evidence in the 20% Case.

It therefore follows that approximately one-half of the total capital required in the five-year program referred to is not such as to contribute anything to savings.

The position with regard to locomotives is however, different. The purchase of locomotives although they may be

merely for the purpose of restoring work capacity and for meeting expanding national requirements will produce savings because of new and more efficient types now available. Mr. Newman in his evidence at page 1470 in the 20% Case stated his view to be that it was unlikely that Canadian Pacific would buy any more steam locomotives, because of the more efficient diesel locomotives now becoming available. In the result, the program for locomotives involves a program of dieselization and because of the change from the steam locomotive to the diesel locomotive an investment of slightly more than \$68,000,000 over the next five years would probably produce, after completion of the program, slightly more than \$12,000,000 per annum of gross operating savings.

In the case of road property the position is somewhat different. The program involving road property consists of the expenditure of approximately \$136,000,000 over the next five years. Of this some \$40,000,000 can be classed as ordinary improvements and the balance of approximately \$96,000,000 may be classed as extraordinary road property improvements consisting of new and improved terminals, heavier rail and the like. With regard to these, it is difficult to estimate what the savings will be but it is known that over a long term they would be substantial. Canadian Pacific estimates roughly that the gross savings to be achieved from this class of expenditure may be expected to approximate something more than \$13,000,000 per year.

Thus the gross savings from equipment and road property involved in the program put forward by Mr. Crump and Mr. Newman will, it is estimated, be something more than \$25,000,000 per year. This amount of gross savings would be realized only in the sixth year of the plan, that is, upon completion of five years of the program. In earlier years, the savings would be much less, not only because the total capital expenditures from which they are derived would be less, but also because there would be a considerable time lag between the making of expenditures and realization of economies from them.

However, these savings are offset in several ways by additional expenses.

The additional expenses involve primarily three general groupings. First, interest charges on the additional capital investment, which for the purpose of the estimate are taken at 4% on equipment (due to the ability to finance equipment on a lower basis than other borrowings) and 5% on road property. The total program would involve additional interest charges of approximately \$11,000,000 per annum. It will be noted from the statements appearing in the Appendix at pp. 36-37 that no charge has been made to operating expenses for interest and depreciation charges in respect of capital expenditures in regard to equipment, attributable to restoration of work capacity and expanding national requirements. In the case of expanding national requirements this is because it has been assumed that increased traffic will result, which will take care of the interest and depreciation charges. In the case of the restoration of work capacity, no interest or depreciation charges have been made to the extent of the capital required up to the original cost of the property replaced. Interest and depreciation charges, however, have been made in respect of capital required to meet cost in excess of the original cost.

However, in regard to road property, since it is impossible to distinguish between the capital expenditures attributable to the restoration of work capacity and expanding national requirements, the charge to operating expenses for interest and depreciation is included for the total amount of the capital expenditures and these are to some extent offset by savings which had not been calculated in regard to the same expenditures for equipment.

Second, additional charges to expenses result from the fact that with an increased inventory of depreciable property, the

depreciation accruals would have to be increased. These additional charges for both road property and equipment would, it is estimated, amount to approximately \$3,000,000 per annum at the end of the five-year period. For the purpose of the estimate, the increase in depreciation accruals was calculated on an amortization basis using the same rates of interest as were used in calculating the increase in the interest charges.

After deducting increases in expenses due to interest and amortization charges from the gross operating savings, the annual net savings after completion of the program would be something more than \$11,000,000.

Third, the carrying out of the program would involve, in addition to the capital expenditures, charges to operating expenses amounting to about \$10,000,000 annually to cover the cost of replacement of non-depreciable property (mostly rail and ballast) and incidental charges.

Since rail and other track material are classed as non-depreciable road property and are maintained currently by charges to operating expenses on a renewal accounting basis, the replacement of these materials in kind would involve a charge to expenses and it is only the increased cost due to the increased weight of rail or improved materials which would be treated as a capital expenditure. It is estimated that this third category of costs chargeable to operating expenses in connection with the capital expenditure program, would amount to about \$10,000,000 per annum throughout the five-year period.

In the result, therefore, the gross operating savings less interest and amortization on the capital expenditures would be insufficient during the first five years to cover additional charges to operating expenses.

In the sixth year and thereafter, however, the operating savings attributable to the first five-year program after deduction

of interest and additional depreciation accruals, would be in excess of \$11,000,000 per annum. This is because on completion of that five-year program the charges to expenses for replacement in kind of non-depreciable road property items would have come to an end. It must be borne in mind that after the end of the five-year period the probability is that a continuing cycle of improvements will be necessary. These in turn, during their installation, will involve increased maintenance expenses which will, like the first cycle, gradually be offset by the savings they will achieve.

It is impossible to say whether a continuation of such a program into a second cycle of five years would produce similar results but it may be assumed that at least some savings could be achieved in the same way.

In the Appendix at pp. 28-37 will be found a memorandum indicating the nature of the program, together with two statements showing the nature and some detail of the program, the gross capital expenditure involved, the gross savings, the interest and amortization charges, together with the net savings per year after the year 1955. The first of these statements shows the information for equipment and the second statement shows the information in respect of road property and equipment combined.

OUTLINE SUBMISSION

"22. The charts numbered 8 and 10 indicate that the gross earnings of Canadian Pacific are taking a decreasing proportion of the national income and that the ratio of net to gross earnings has been diminished drastically.

23. If Canadian Pacific is to continue to give low-cost, efficient transportation, a reasonable ratio between net and gross earnings must be provided.

24. Prosperity throughout Canada results in increased volume of traffic for Canadian Pacific. Anything which impairs or retards the national economy adversely affects Canadian Pacific interests. This is particularly true in respect of Western Canada where the Company has two-thirds of its railway mileage. Therefore, there can be no essential conflict between the Canadian Pacific and the national interest in relation to Western Canada or any other part of Canada.

"25. Canadian Pacific submits basic economics supports the proposition that the cost of rail transportation, including the wages of capital as well as labour, should be borne by the traffic which moves over the railway.

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26. Canadian Pacific will submit at an appropriate stage of the hearings that the scope of your Commission under Order-in-Council P.C. 6033 is limited by its terms to proposals for new or amending legislation. It will further submit that the scope of your Commission excludes the matters referred to the Board of Transport Commissioners by Orders-in-Council P.C. 1487 of April 7th, 1948, and P.C. 4678 of October 12th, 1948. Canadian Pacific points out that the two Orders-in-Council referred to, directed the Board to make the inquiries therein mentioned and that such inquiries constitute inquiries regulated by special law within the meaning of Section 3 of the Inquiries Act. At the same time Canadian Pacific respectfully points out that it is no part of the scope of your Commission to sit in appeal upon decisions of the Board. In any event, Canadian Pacific will submit that in order to avoid duplication of effort and unnecessary expense, your Commission ought not to embark upon the inquiry with regard to the matters so referred to the Board until such time as the Board has dealt with such matters pursuant to the directions contained in such Orders-in-Council. Canadian Pacific wishes to make it clear that in making such submissions to your Commission, it does so with the greatest respect and with an earnest desire to avoid obstructing or impeding your Commission's inquiry. More particularly, Canadian Pacific has no desire that the time of your Commission shall be taken up with arguments on legal questions. Canadian Pacific submits that the avoidance of duplication as between the Board and your Commission will not prejudice either the rights of the persons and governments whose representations brought them about or prejudice the power of your Commission to deal with such matters after the inquiries by the Board have been completed. "

FURTHER SUBMISSIONS

In the light of the submissions made to your Commission, the question as to the scope of the inquiry which your Commission has undertaken warrants an early discussion and, if possible, an early decision so that the parties may not be in doubt as to issues to which they should direct their evidence.

The question as to the scope of your inquiry involves consideration of four propositions.

First - it would be beyond the power of the Governor-in-Council under the Inquiries Act to assign to your Commission for inquiry any subjects already assigned to the Board of Transport

Commissioners for inquiry under Orders-in-Council P.C. 1487 and P.C. 4678.

Second - it would be beyond the power of the Governor-in-Council under the Inquiries Act to require your Commission to sit in appeal from the decisions of the Board of Transport Commissioners rendered under the authority conferred upon that Board by Parliament under the Railway Act.

Third - P.C. 6033, on its true construction, does not assign to your Commission for inquiry matters that have already been assigned to the Board of Transport Commissioners for inquiry. If there is any doubt about the interpretation of P.C. 6033 it should unquestionably be given an interpretation that would give it validity.

Fourth - it would be unsound to contend that in order to determine whether any amendments to existing legislation are required, your Commission must duplicate the investigations assigned to the Board of Transport Commissioners.

As to the first proposition.

Your Commission was appointed to conduct an inquiry pursuant to an Order-in-Council issued under the authority of the Inquiries Act, R.S.C. 1927, Chapter 99. The power of the Governor-in-Council to appoint persons as commissioners under Section 3 of that Act is plainly limited. It can only be exercised "In case such inquiry is not regulated by any special law".

It, therefore, becomes important at the outset to determine whether your Commission is being invited to extend your inquiry into matters that are already regulated by some special law.

If the inquiry into such matters is not regulated by special law, then it is clear that the Governor-in-Council has power to appoint your Commission to inquire into them. If, however, the inquiry into such matters is regulated by any special law, it is equally clear that it would be beyond the power of the Governor-in-Council to refer such matters to you for inquiry.

It is apparent from many of the submissions that have already been put to your Commission that you are being invited to conduct an inquiry that is already regulated by a special law. That special law comprises the Railway Act, together with Orders-in-Council P.C. 1487 and 4678. These Orders-in-Council are prior in date to that under which the present inquiry is being conducted.

During the course of the Board's hearings in the 21% Case, the Board heard many complaints as to alleged anomalies in the freight rates structure, including the alleged disparity in rates between Eastern and Western Canada, and that horizontal percentage increases would disturb so-called competitive rate relationships. Counsel for the railways took the position that such complaints ought not to be dealt with in a revenue case and that the railways would welcome a general freight rates investigation by the Board after the conclusion of that case.

Accordingly, after the decision in the 21% Case was rendered on 30th March, 1948, the Governor-in-Council by P.C. 1487, dated 7th April, 1948, directed the Board of Transport Commissioners for Canada to undertake a general freight rates investigation.

The Order-in-Council recited that "many changes have taken place in the economy of Canada and it is therefore advisable that the Board of Transport Commissioners for Canada be directed to make a thorough investigation of the rates structure of railways and railway companies which are under the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rates structure which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities so as to permit the freest possible interchange of commodities between the various provinces

and territories of Canada and the extension of Canadian trade both foreign and domestic, having due regard to the needs of agriculture and other basic industries."

The only limitation imposed upon the investigation to be made by the Board was that it was to be "subject to such special statutory provisions as affect freight rates". There can be no doubt that the special statutory provisions referred to were those relating to the rates on grain and flour in Western Canada and to the rates governed by the Maritime Freight Rates Act.

The result was that when the members of the present Commission were appointed, an inquiry described as "a general freight rates investigation" had been under way for some eight months. This was clearly an inquiry regulated by special law within the meaning of Section 3 of the Inquiries Act and thus the Governor-in-Council was without power to appoint a commission to inquire into the same subjects.

Following representations made to the Governor-in-Council by the Governments of seven provinces, an appeal from the decision of the Board in the 21% Case was set down for hearing and was argued before the Governor-in-Council in September 1948.

The appeal resulted in the issue of Order-in-Council P.C. 4678 on 12th October, 1948, which referred to the petition of the seven provinces and recited ten grounds of complaint against the judgment of the Board.

The Order-in-Council concluded with a direction to the Board "to consider in the light of such changes in conditions of operations as have or will have taken place, the complaints set forth in the petition concurrently with the pending application for a further increase in freight rates". It is apparent from reading the submissions made by several of the provinces to your Commission, that an attempt is being made to have your Commission inquire

into and report upon subjects referred to the Board under that Order-in-Council.

This also was an inquiry regulated by special law within the meaning of Section 3 of the Inquiries Act and thus the Governor-in-Council was without power to appoint a commission to inquire into the same subjects.

The Railway Act, as your Commission knows, confers very broad powers upon the Board of Transport Commissioners to deal with railway freight rates and the Board is also, under several other statutes, empowered to deal with other transportation subjects.

Section 36 of the Railway Act provides that "the Board may of its own motion or shall upon the request of the Minister, inquire into, hear and determine any matter or thing which, under this Act, it may inquire into, hear and determine upon application or complaint . . ."; that is to say; that where an interested person, shipper or industry feels aggrieved in regard to any matter such as entitles him to make a complaint under the Railway Act, the Board may, notwithstanding that no complaint is filed, proceed on its own motion to inquire into the matter and must do so upon the request of the Minister of Transport.

By Section 38 "the Governor in Council may at any time refer to the Board for a report, or other action, any question, matter or thing arising, or required to be done, under this Act, or the Special Act, or any other Act of the Parliament of Canada . . ."

Section 38 would seem to embrace by its terms a means by which the Board of Transport Commissioners could be asked to report upon anything relating to the subject of railway transportation whether that subject could have been investigated upon a complaint made by an interested party or not. By that is meant that if the matter is one in the ordinary course

which could be dealt with on complaint, the Minister could direct the Board under Section 36 to hold the necessary inquiry, but if the matter were one which could not be the basis of a complaint, the Governor-in-Council could, under Section 38, ask the Board to report.

Although neither of the two Orders-in-Council referred to indicates specifically that they are issued in pursuance of Section 38 of the Railway Act, it must be assumed that they are in fact so issued, because that section is the only section by which the Governor-in-Council is authorized to direct such inquiries to be made by the Board.

In the result, therefore, the submission of Canadian Pacific is that by Order-in-Council P.C. 1487 such matters as: the investigation of the disparity between the rates in Eastern and Western Canada; questions as to how equalization can and should be accomplished; questions involving the freight classification and the minutiae of rates and rate scales are plainly within the ambit of the general freight rates investigation which the Board was directed to undertake.

With regard to Order-in-Council P.C. 4678, it is the submission of Canadian Pacific that there has been likewise excluded from the scope of your Commission's inquiry, matters involving the investigation of the question as to whether the maintenance charges, including charges for depreciation, are excessive for rate making purposes.

It follows also, that complaints as to the propriety of a horizontal percentage increase fail to be dealt with either under P.C. 1487 or under P.C. 4678, or both.

Item (j) of the complaints recited in Order-in-Council P.C. 4678, is as follows:-

"(j) The Board erred in authorizing a horizontal, or flat percentage, increase of 21% in all freight rates, disregarding and accentuating existing disparities in the freight rate structure, and the Board further erred by failing to limit the authorized increase to flat maxima amounts."

Your Commission will further note that in the second paragraph following the recital of the complaints in this Order-in-Council the following paragraph appears:-

"The Committee observe that one of the representations made by the petitioning governments is that a horizontal or flat percentage increase of 21% in all freight rates disregards and accentuates existing disparities in the freight rate structure, and that this had already been the subject of a direction to the Board, as set out in Order in Council P.C. 1487 of April 7, 1948, in which the Board was directed to make a thorough investigation of the rates structure of railways and railway companies which are under the jurisdiction of Parliament with a view to the establishment of a fair and reasonable rates structure which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, subject to such special statutory provisions as affect freight rates. "

It is, therefore, clear that the Governor-in-Council had no doubt that the question as to the propriety of horizontal or flat percentage increases was included in the reference under P.C. 1487. In any event it is plainly the subject of inquiry by the Board to be determined under one or the other of the two Orders-in-Council.

As to the second proposition.

It would scarcely seem to require argument that the Governor-in-Council could not establish any tribunal with powers to sit in appeal upon judgments of the Board of Transport Commissioners. Only Parliament could establish such an appeal, as in fact it has done under the Railway Act, that is to say, under subsection (1) of Section 52 to the Governor-in-Council and subsections (2) and (3) of Section 52 to the Supreme Court of Canada.

Canadian Pacific submits that many of the briefs presented to your Commission during the regional hearings involved complaints in the nature of appeals from the Board. By way of

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example, reference is made to the complaint of the Alberta Associated Chambers of Commerce and Agriculture presented at Edmonton (p. 2201 of the transcript) and the complaint of British Columbia Feed Manufacturers Association presented at Vancouver (p. 3057 of the transcript) against the alleged disparity between the rates on feed grain and grain for domestic consumption in British Columbia and the rates on grain for export through British Columbia ports. As your Commission may know, this matter has been the subject of complaint to and decision by the Board of Transport Commissioners on other occasions. See for example the judgment of the Board in Fraser Valley Burrer Farms Co-Operative Association, et al. v. Canadian Pacific and Canadian National, 43 C.R.C. 97, in which the Board dealt with and dismissed identical complaints.

The Commission will find many other examples of this in the transcript.

As to the third proposition.

Order-in-Council P.C. 6033 on its true construction does not assign to your Commission for inquiry, matters that have already been assigned to the Board of Transport Commissioners under the earlier Orders-in-Council.

Order-in-Council P.C. 6033, after reciting representations made to the Government, states the conclusion to be that it would be in the public interest that an inquiry be made "into the matters involved in order that all questions of economic policy within the jurisdiction of Parliament arising out of the operation and maintenance of national transportation may be examined and reported upon".

It will be noted that the inquiry is in order that matters of economic policy be reported upon. These are the governing words of the Order-in-Council and no interpretation of the subsequent specific references in Paragraph 2 can be made without giving full weight to them.

The specific assignments under Paragraph 2 are introduced by words which are designed to preserve the broadness of the generality and while, therefore, such specific assignments are not to be interpreted as restricting the generality of the broad terms of reference, they cannot enlarge the general terms of reference. It is, therefore, clear that the Commission is to concern itself with broad questions of economic policy within the jurisdiction of Parliament and that unless submissions under the specific heads of Paragraph 2 are directed to these broad questions of economic policy, it must be concluded, in the submission of Canadian Pacific, that the authority of your Commission does not extend to them. For example, it is quite easy to relate economic, geographic and other disadvantages in various sections of Canada to questions of broad economic policy within the jurisdiction of Parliament.

On the other hand, under clause (b) of Paragraph 2 a review of the Railway Act with respect to such matters as guidance to the Board in general freight rates revision does not contemplate your Commission entertaining detailed complaints as to specific rates or the consideration of detailed allegations of specific discrimination between regions and industries. This would leave open to your Commission such broad questions as to whether a given region should have the advantage of subsidies and whether the subsidy should take the form of legislation such as the Maritime Freight Rates Act but it would not, in the submission of Canadian Pacific, open up discussions of individual rates such as are clearly within the jurisdiction of the Board of Transport Commissioners and such as are from day to day being dealt with by that Board. The consideration, therefore, of the specific heads under Paragraph 2 suggests, when considered in conjunction with the general terms of reference, that broad questions and not the minutiae of rates are to be considered.

As a further example, consideration might be given under clause (d) of Paragraph 2 to broad questions as to whether, as a matter of economic policy in the Dominion, legislation should be adopted dealing with uniform accounts and the related problems of depreciation accounting, the segregation of assets and the like. This would not, however, in the submission of Canadian Pacific, involve determination of the detail of accounts or, for example, of questions as to whether the rate of depreciation in effect on a given railway is too high or too low.

Paragraph 5 of the Order-in-Council is also important. By that paragraph the scope of the Commission is expressly said not to extend to the performance of functions which under the Railway Act are within the exclusive jurisdiction of the Board of Transport Commissioners. Quite clearly any matter specifically entrusted to the Board under the Railway Act and any matter with which the Board has power to deal under that Act are functions of the Board of Transport Commissioners and they are no less those functions whether or not parties appearing before your Commission agree with the decisions of the Board arrived at in the performance of those functions.

It seems also obvious that the word "exclusive" is satisfied if it can be shown that a function has been committed to the Board under the Act, because the assignment to the Board of a specific function would seem necessarily to imply that the Board alone is to exercise that function. It follows, therefore, that any power now given to the Board is a function of that Board and is therefore outside the scope of your inquiry.

The distinction is clear. If the question arises as to whether the Board's powers under existing legislation are too wide or too narrow as a matter of economic policy, then that would clearly be within the scope of your Commission. On the other hand, the Board's action or failure to act in a satisfactory manner under an existing power is outside the scope.

the other hand, a second function to be found under Section 38 of the Railway Act to which earlier reference has been made. This latter function, unlike the other functions of the Board, is not to be performed by the Board on its own motion or on complaint, but only upon the matter being referred to the Board by the Governor-in-Council under that section.

It follows that by the terms of Order-in-Council P.C. 6033 those matters which are the day to day function of the Board under the Railway Act are excluded from the scope of your inquiry and in addition, any function of the Board pursuant to a reference by the Governor-in-Council under Section 38 are likewise excluded from the scope of your inquiry. These exclusions do not depend upon any questions under the Inquiries Act such as have previously been referred to, but depend upon the true interpretation of the Order-in-Council itself as limited by Paragraph 5 of that Order-in-Council

Coming back to the second branch of this proposition, if perchance any doubt should exist as to the interpretation of P.C. 6033, your Commission would undoubtedly apply the elementary rule that an interpretation should be adopted that will give the Order-in-Council validity. In other words, your Commission would not ascribe to Order-in-Council P.C. 6033 any interpretation which could result in a duplication of the inquiries being conducted by the Board under Orders-in-Council P.C. 1487 and P.C. 4678 because such an interpretation would render P.C. 6033 invalid to that extent.

As to the fourth proposition.

There is no doubt that many of the parties making representations to your Commission have as their principal object an attempt to obtain from your Commission a recommendation to Parliament on matters which they have argued in recent rate cases and are free to argue before the Board in the general freight rates investigation. This intention is shown, in the submission of

Canadian Pacific, by the failure of the seven provincial Governments to make submissions to the Board in the general freight rates investigation now under way and by the fact that the representations made to your Commission, to a very large extent, are the same as representations that have been made to the Board in the 21% Case and in the 20% case.

It is plain that Parliament by Section 3 of the Inquiries Act and the Governor-in-Council on the true interpretation of P.C. 6033, intended to avoid a duplication of inquiries into the same matters at the same time.

On the other hand, it will no doubt be contended that when your Commission is considering the necessity for amending legislation, it must necessarily make investigations which the Board might also be making in the inquiries conducted by it, but that these investigations are necessarily incidental to the power of your Commission to consider the need for amending legislation.

For example, the Province of Manitoba in its submission proposes that there should be laid down in the Railway Act a provision by which the Board is empowered to fix the proper standard of maintenance to be performed by the Canadian railways. That Province has indicated that it will contend that this necessarily involves an investigation by your Commission to determine whether or not the present standards of maintenance, or perhaps the present charges for maintenance by Canadian Pacific, are excessive for rate making purposes. It is the submission of Canadian Pacific that your Commission can consider in the abstract whether it is feasible or desirable that the Board's powers in this connection be enlarged, but it surely cannot have been the intention to ask your Commission to investigate into questions as to whether the charges to expenses for maintenance, or depreciation in a given year are excessive for rate making purposes. That is a pure question of fact upon which there already has been adjudication and upon which there will

probably be an adjudication by the Board on each application for increases in rates. Such questions as to whether maintenance expenditures or depreciation charges are excessive will arise whether or not as a matter of principle, your Commission should recommend that the Board be specifically empowered in the statute to determine the standards of maintenance or the system of depreciation accounting to be followed.

In the light of the foregoing propositions, it would now seem appropriate to indicate the matters that, in the submission of Canadian Pacific, are within the scope of the inquiry by your Commission.

Under Paragraph 2(a) your Commission could review and report upon economic, geographic and other disadvantages under which any section of Canada finds itself in relation to transportation services, and could recommend, if deemed advisable, that subsidies be granted to offset these disadvantages, whether such subsidies took the form of direct subsidies to industry or transportation subsidies such as are involved in the Maritime Freight Rates Act. Similarly, your Commission could recommend, if deemed advisable, that Parliament should undertake the construction of transportation facilities of any kind in areas which either are not now served or are in your opinion inadequately served.

Under Paragraph 2(b) your Commission could recommend, if deemed advisable, legislation laying down principles to guide the Board in general freight rates revision, competitive rates, international rates and the like. For example, your Commission could recommend, if deemed advisable, that the Act be amended so that the Board, in considering rate making in Canada, should establish rates in which the cost of service, now merely one factor in rate making, should be applied exclusively and that the value of service principle should be discarded. It could also recommend, if deemed advisable, changes in the Railway Act with regard to the making of competitive rates and the method by which

the Board might determine whether any of these rates are or are not compensatory. Your Commission might also suggest to Parliament, if deemed advisable, the extent to which amendments to the Railway Act might be undertaken with a view to extending the Board's jurisdiction over international rates.

With regard to Paragraph 2(c), no question of the scope of your Commission's inquiry would seem to arise.

Under Paragraph 2(d), your Commission might quite properly review accounting methods, as distinct from the details of the accounts, and the statistical procedure, as distinct from the details of statistics, to the extent necessary to enable you to report upon the advisability of adopting (or otherwise) measures conducive to uniformity in such matters. In that connection, your Commission could also consider the principle of depreciation accounting, as distinct from an examination of the question as to whether rates of depreciation in themselves were excessive or inadequate. As to the segregation of assets, revenue and other income as between railway and non-railway items, your Commission could, if deemed advisable, make suggestions as to the principle upon which the accounts should be kept for the purpose of any such segregation and could recommend, if deemed advisable, that legislation be adopted to this end.

As to Paragraph 2(e), no question as to the scope of your Commission's powers would seem to arise.

As to Paragraph 2(f), your Commission could, if deemed advisable, recommend changes in railway legislation, so far as the necessity for such changes is apparent from the decisions of the Board in the past or from the Board's findings in the inquiries being conducted by them under Orders-in-Council P.C. 1487 and P.C. 4678. Your Commission might properly recommend the repeal of subsection (1) of Section 52 of the Railway Act, as this clearly has not been referred to any other tribunal for report. Similarly, your Commission could, if deemed advisable,

properly recommend the repeal of the proviso in subsection (5) of Section 325, and also the repeal of subsection (6) of that Section, since the matter of the Crow's Nest Pass grain rates is specifically excluded from the reference to the Board under P.C. 1487.

Moreover, your Commission could, if deemed advisable, recommend amendments to subsection (4) of Section 314 depending upon the view you may take as to the submissions of the Province of Alberta in connection with the alleged long and short haul discrimination. Moreover, your Commission could recommend, if deemed advisable, an amendment to Section 351 of the Railway Act so that the Board of Transport Commissioners would have the power to determine the rates to be paid by His Majesty for the carriage of mail and His Majesty's naval and military forces and their stores.

The Commission's authority under Section 4 of the Order-in-Council does not raise any question, since the general powers there authorized are limited by the interpretation to be placed upon the other sections of the Order-in-Council.

It will thus be seen that your Commission can exercise exclusive and important functions under each of the several headings, whether under the general terms of reference or under the specific clauses of Section 2, without transgressing upon or duplicating the functions of the Board of Transport Commissioners, under the Railway Act or under Orders-in-Council P.C. 1487 and P.C. 4678.

It follows, therefore, that such an interpretation is entirely consistent with the position taken by Canadian Pacific as to the limiting effect upon the scope of your Commission resulting from the language of the Inquiries Act and of Orders-in-Council P.C. 1487 and P.C. 4678 and your Commission can also exercise its functions without involving any duplication of effort and the incurring of any added expense.

It is, therefore, the view of Canadian Pacific that having regard to the foregoing submissions, many of the submissions put to your Commission in the briefs and during the hearings are

plainly matters with which your Commission ought not to deal. The scope of your Commission nevertheless is such as to impose upon you a mountainous task. No injustice would be done by giving effect to the argument made in this submission, since everyone who thinks he has a grievance will have available to him a tribunal where that grievance can be fully adjudicated upon.

OUTLINE SUBMISSION

"27. The Order-in-Council constituting your Commission, without restricting the generality of your terms of reference, did specify six subjects to be reviewed and reported upon. Without prejudice to the position taken in paragraph 26 these are now dealt with in the order in which they are set forth in Clause 2 of P.C. 6033.

Clause 2(a) of the Order-in-Council provides:-

'2(a) Review and report upon the effect, if any, of economic, geographic and other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein, and recommend what measures should be initiated in order that the national transportation policy may best serve the general economic well-being of all Canada.'

28. The disadvantages that certain sections of Canada believe themselves to be under in relation to transportation services appear to be based largely upon the view that geographical disadvantages must be compensated for at the expense of those portions of Canada which possess geographical advantages or at all events at the expense of Canada as a whole.

29. The existence of economic activity in these sections, however, is proof that they enjoy certain economic advantages over other areas. These advantages derive from cheap land, climate, fertility of soil, existence of minerals and various natural products and resources.

30. Transportation is essential to the economic realization of these advantages. Railways, by providing this transportation, have enabled these natural advantages to be developed on a scale which otherwise could not have been possible. Thus, the railways have mitigated, while they cannot eliminate, the geographic disadvantage of distance from markets."

FURTHER SUBMISSIONS

The situation of any area of Canada with respect to transportation is but a single factor in the general economic situation

of the area. Other factors must be considered, such as climate, soil, mineral and forest resources, in order that any comparison of relative economic advantages and disadvantages between various areas of the country may be made.

The important fact is not whether an area has some handicap in the economic sense, but whether, balancing advantages against disadvantages, the community is able to participate fully in the economic life of the nation. It is true, for example, that Montreal and Vancouver have an advantage over Winnipeg, Regina, and Edmonton, in respect of access to water transportation, permitting traffic with other countries, but Winnipeg, Regina and Edmonton occupy strategic positions in the economy of a vast area of fertile soil, exposed to certain special climatic risks, but still capable, as experience has demonstrated, of producing an enormous volume of basic foodstuffs -- not to speak of the mineral and other natural resources which are available in the Prairie Provinces.

There are some Northern mining areas in Canada which suffer under severe climatic and transportation handicaps, but are still outstanding in their economic opportunity, owing to rich deposits of raw materials. There are some areas of the Precambrian Shield which are definitely lacking in opportunities for agriculture, in merchantable timber -- and so far as is now known -- in mineral deposits but which have experienced important economic development, as a result of their accessibility as areas for recreation.

It has not yet been suggested that compensation is due to any part of Canada because of the poverty of its soil as compared with that of any other part, because of its lack of merchantable timber as compared with some favoured areas, or because of its climate, yet each of these factors may be as important to the development of any area as is its geographic location and resulting transportation situation.

It is not possible to place all areas of Canada in the same position with regard to transportation advantages or

disadvantages. It is certain that, if an attempt were made to reach this objective, then the distribution of population and the development of activity which produces the highest net national income under existing techniques would no longer be suitable to the new situation, and there would have to be a process of readjustment. The removal of transportation disadvantages would involve so great a disturbance of the economic order that it is no more than an ultimate advantage, with considerable immediate losses.

Acceptance of the principle of complete removal of transportation disadvantages would involve some method of making transportation a free service. While this suggestion would not, of course, be seriously put to your Commission, practically every criticism offered as to the existing situation of transportation has been accompanied by a demand for a move in this direction. It is submitted that it would be wise to consider the extreme case, as indicating the economic consequences of an attempt to reduce transportation disadvantages, where they are alleged to exist.

With all transportation free to the users, it would be quite reasonable to foresee a condition in which a steel mill could be located in the Toronto area, using Nova Scotia or Alberta coal, and bringing iron ore from Newfoundland, Labrador or Vancouver Island. The established industrial area of central Canada would be at no disadvantage as compared with the industrial community of British Columbia, in using the specially valuable timber resources of that Province.

If there were to be no charge for transportation, then there would be no reason why the cost of transportation should be a factor in any economic decision. Factories would be located where they are most convenient, or as a result of any whim on the part of those who have the decision as to location. There would be no reason for the present tendency to

reduce total cost of manufacture by processing weight-losing materials close to the point of production, because none of the cost of moving these materials would be charged against the users of them. (1)

Canadian Pacific admits that this is an extreme form of the demand for the artificial reduction of transportation charges, but it must be quite evident that every movement in this direction tends to produce such conditions.

The effect of such a transportation policy would inevitably be to increase the use of transportation services -- assuming there were a willingness to meet the demand for increased services and the ability to make the necessary capital investments in plant. Such a policy, therefore, must inevitably result in a diversion into the provision of transportation of a far greater proportion of the total effort of the Canadian people than is the case under the present system of endeavouring to relate transportation charges to transportation costs, as far as this can be done intelligently. Exactly to the extent to which unnecessary use of transportation services were stimulated in this way, there would be less productivity available in this country to be devoted to providing the nation with useful and desirable goods.

There are now economic activities in all the presently settled areas of Canada. Settlement appears to have spread almost completely over readily available agricultural land, and to have been established wherever an important block of forest resources or mineral deposits have justified the establishment of communities. There is not, and has not been in Canadian history, any marked withdrawal from settlement which has been once established -- unless possibly in the case of certain of the less favoured agricultural areas. These cases of withdrawal appear to have occurred, not in

(1) cf. D. Philip Locklin, Economics of Transportation (Chicago: Richard D. Irwin, 1927), Chapter III. See also Carl J. Friedrich, Alfred Weber's Theory on the Location of Industries (Chicago: University of Chicago, Press, 1929).

the newest areas of the country, but in older areas, and not as any result of transportation disadvantages, but as a consequence of agricultural activity on marginal soils. (1)

OUTLINE SUBMISSION

31. Canadian Pacific submits that national transportation policy should aim at the maintenance of facilities adequate to serve at all times a freely growing national economy. Total transportation costs should be as small a part as possible of total national income and should make no unnecessary or uneconomic use of labour or materials.

32. Further, if it is decided that any industry or any part of Canada is to be assisted at the cost of the whole nation, subsidies, if and when given, should be certain in their effect and flexible in their administration. Transportation subsidies are, by their very nature, unable to meet these tests and should therefore not be resorted to.

33. Canadian Pacific believes that the present system of establishing and controlling freight rates tends to produce transportation charges which encourage the development of Canada along sound economic lines, and compensate for geographic disadvantages as far as it would be safe to endeavour to accomplish this by means of the freight rate structure.

34. The impression prevails in many quarters that the people of Canada are at a disadvantage in respect of transportation charges as compared with those in the United States, and that, owing to the independent economic existence of this nation forcing - as the statement is sometimes put - trade into East and West Channels, while North and South movement would be normal, Canadian producers and consumers suffer from improperly high transportation charges. In the first place, the great volume of internal trade in the United States moves East and West as in Canada, and over similar distances. In the second place, the present freight rate system of Canada provides, for the great bulk of the movement of goods, freight rates which are lower, not higher, than those charged in the United States for similar movements over similar distances. The economic union of Canada with the United States, bringing with it a freight rate system in this country such as now exists in the United States, would greatly increase, not decrease, the burden of transportation charges on the producers and consumers of Canada and the bulk of the traffic would continue to move as long distances as at present."

FURTHER SUBMISSIONS

There is very good reason that the basis of national transportation policy should be the provision of transportation

- (1) It is worth noting that Isaiah Bowman, the noted geographer has a great deal to say about the weight of climatic factors upon pioneering areas, but railways, when they do come are an immense help toward the establishment of a settled community. See his The Pioneer Fringe (New York: American Geographical Society, 1931), and especially, his description of the Jordan Country in Montana, p. 122 pf. See also the works of the Canadian Pioneer Problems Committee under the general editorship of W. A. Mackintosh

services with full regard to overall transportation costs. (1)

Canadian Pacific submits that Canadian railways have gone as far as would be desirable in the direction of providing low transportation rates. If they have erred at all, they have done so in the direction of making many transportation charges lower than was necessary for the economic development of Canada. Too low transportation charges tend to make transportation an unnecessary large portion of the national activities. The fact is that under the transportation system set up in Canada in the past and under the system of establishing transportation rates previously employed, economic progress in Canada has been at least as rapid as in the United States. This has been true despite the lack of geographic continuity of the Canadian economy, despite the fact that it is divided by barriers of unproductive territory in a sense which is not true in the United States and despite the fact that the total developed natural resources of the United States are much greater than those of Canada, and much more conveniently distributed.

At any given point of time the United States has always been, upon the average, on a higher level of wealth and income than Canada. This fact has probably given rise to feelings of inferiority which are not justified. It stems from a failure to see the problem in its proper perspective.

The position of any society depends in part upon the length of time that it has been developed economically. No matter how bright the prospects, or how large the resources, it is not possible to do everything at once. Therefore, newer areas tend to be behind older ones even though their progress is wholly certain.

transportation. It is not to be inferred, however, that the cost of providing the transportation service can be ignored or that freight rates can be reduced below the cost of service." Locklin, op. cit., p. 11.

At 1830 the Genesee Valley in Central New York was a great wheat exporting area, relatively comparable to the position of Saskatchewan today. It was a part of the pioneer fringe of its time. It was not until after the Civil War that the middle-west of the United States comes into prominence as a manufacturing area. The west and south of the United States have long entertained a grievance against the north and east on the ground that they are exploited as colonial territories. It is a feeling which is only changed slowly. Within the last twenty years a prominent historian of the University of Texas was advancing this argument in all seriousness despite the obviously bright future of the State. If one hears less of this complaint now it is not because the tendency to self-pity is any less strong, but solely because the changes in the Texan economy in the intervening period have been so striking as to make any further complaint unlikely to be entertained.

The same process has probably been operative in Canada. The newer areas west of the Great Lakes have tended to regard the differences in economic development between themselves and the central provinces as being due to a conscious exploitation rather than as a result based upon the relative length of time over which the two areas have been settled.

The real question is not whether Canada is lower in average wealth and income than is the United States. That is a fact, and is in part at least explained by the timing of development. What is important is whether the Canadian economy is advancing as rapidly as is that of the United States so that the discrepancy between the two is possibly narrowing and is at least not widening. The evidence will be examined first of all in relation to Canada as a whole and second in relation to the three areas which have at one time or another entertained a sense of grievance.

Canada:

The clearest and most inclusive index of development is in relative population. This is especially true when movement of

population between the two countries is free, but even for the period in which there has not been absolute freedom it is still true that the relative changes in population tend to show economic health and vigor, or the reverse.

Even since the turn of the century, Canada has been increasing in population more rapidly than the United States. It was most marked in the period 1900 to 1921, but the process continued thereafter and gives every promise of projecting itself into the future. (See Chart and Statement at pp. 38-39 in the Appendix).

This is not solely the result of opening new lands. It is very much more the result of the general development of the world economy, making it economical to increase the development of Canadian resources. So long as the structure of world trade remains strong it is quite probable that Canada will continue to grow a little more rapidly than does the United States.

A second approach to the same problem is to take the available indexes of physical volume of production and to compare them. This is done below on two bases. First of all an index of the total volume of production in the United States from 1830-1930 is compared with three sectional indexes of production in Canada from 1870-1939. It will be obvious that these indexes are not so complete as those made for the period since 1919, but they are good enough to give a broad, long-period comparison between the two countries. The United States index, because of the manner of its construction, leans rather heavily toward manufacturing and mineral production and away from agriculture. It is, therefore, more properly to be compared with the Canadian indexes of manufacturing and of mineral production than with the index of primary produce production. It is clear from a comparison of these indices that Canada is certainly holding its own and possibly is gaining a little upon the United States. (Chart and Statement at pp. 40-41 of Appendix).

There are available much more refined indices of industrial

production for Canada and the United States for the years 1919 to date. If one considers the first 21 years, one would say quite clearly that Canada was gaining relatively upon the United States. It opened the period well below the United States and was equal with it toward the end. However, if one takes in the War period, one would incline to say that the two countries lie side by side. Certainly there is no evidence of a relative retrogression in Canadian production. When one considers the very special difficulties involved in measuring the volume of War production, and especially the imperfections which may be introduced by the use of man-hour data in lieu of direct measurement of physical output, it seems wise not to lay too great stress upon divergence of the curves since 1941. Over the whole 30 years Canada has held her own. (See Chart and Statement at pp. 42-43 of Appendix).

It is regrettable, but the national income figures cannot be used as a check upon these indices. National income figures for the United States are available as a continuous series from 1929 only. The Canadian figures are available back to 1919. More important, there is the difficulty of comparing dollar figures without a free market to establish the relative value of those dollars.

The most impressive single politico-economic fact in the modern world is the power of the United States to maintain a rapid rate of increase in its productivity per worker in the face of increases in the number employed (and decreases in the average number of hours worked per year). The result is an increase in total national product over any period such as a generation which can only be described as startling. Canada is exposed to the full competition of that immensely vital economy throughout the whole breadth of this country. It must meet that competition or be gradually pushed aside in the economy of this continent. In fact, it has not only held its position, but stands higher now than it did at the opening of the century.

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The facts cited above are a reasonable demonstration that nationally Canada has held its own. What can be said of the particular regions ? Any attempt to answer this question proceeds in the face of a general warning that one can only see the net resultant of multiple forces. The development of any particular territory shows what use people are able to make of the resources of that territory under the techniques of the time. For example, if population had spread over the Prairie Provinces before the development of railways, they would have had to become largely self-sufficient because of the extreme cost of transportation; but they would still have been compelled to develop a small export in some product, probably meat, in order to pay for absolutely necessary imports. Having the advantages of railways in advance of settlement, (1) they were spared this costly expedient of an early self-sufficiency which would have been abandoned as soon as railways were built. They could orient themselves at once to a world economy. Having established the foundation for their economic life on the export of grain, they could then move toward a more broadly based economy by the development of other resources and by a greater degree of secondary production.

The Maritime Provinces, compared with the Northern New England States Maine, New Hampshire and Vermont.

Both of these areas are affected by the rise of land transport in relative efficiency as against sea transport and by the competition of other areas which are closer to the heart of the continent. This rise of land transport and of a continental economy in North America, have diminished the relative importance of a position on or near the sea. Both of these areas, then, have

(1) Report of the Royal Commission on Dominion-Provincial Relations (Ottawa, 1927), p. 201. See also W. A. Mackintosh, Prairie Settlement: The Commercial Basis (Toronto, 1927), Chapter III. The opinion of an outsider is also interesting, see A. Siegfried, Canada: an International Power (London: Jonathon Cope, 1949), p. 50.

been under a certain handicap due to changing conditions and it is worth while to study their relative performance in order to see how they have fared.

Both areas are declining in relative importance within their respective national economies. The difference between the two is that Northern New England has been declining for a longer period. It reached its peak of relative importance at 1800 to 1810 and has been slipping relatively ever since. At 1800 these three states contained 9.23% of the population of the United States, 3.20% at 1870, 1.23% at 1946. The Maritime Provinces had 20.8% of the population of Canada at 1871, 9.6% at 1946. But this is solely a relative change. Between 1871 and 1946 the population of the Maritime Provinces increased by 55%, that of Northern New England by 35%. (See Chart and Statement at pp. 44-45 of the Appendix).

It is very hard to see in either of these comparisons any sign of a special handicap upon the Maritime Provinces. They are not newly settled areas. They have, it is true, been compelled to adjust to new conditions, but it is also true that Northern New England has been called upon to make an adjustment of at least equal severity. Looking at the population figures, one would say that either the Maritimes have been more successful in adjusting themselves to the economic environment of the time, or else that they have received a substantially greater measure of assistance under Canada's national policies than the New England States have received under the United States policies. Clearly, however, there is no sign in the population figures at least, that the Maritimes are suffering under some special disadvantage due to their being inside Canada, but rather the reverse. None of the other indices of economic health which have been examined give ground for any qualification of this statement.

The Prairie Provinces, compared with the Spring Wheat States of the United States.

To be continued

which is fully comparable with the Prairie Provinces. For present purposes, the States of Montana, Wyoming, North and South Dakota, and Nebraska have been chosen. There is some doubt as to whether Nebraska quite fits within this group, but its inclusion is clearly favourable to the United States and is therefore taken for that reason.

In population the advantage is clearly in favour of the Prairie Provinces. Ever since 1890 the population of the two areas has been converging. Recently the population of these states in the United States has been decreasing, while that of the Prairie Provinces has been relatively stable. It is perhaps difficult to be quite certain whether this is anything more than the result of later development, but the fact remains that the population of the Prairie Provinces is increasing, whereas that of the Spring Wheat States is decreasing. (See Chart and Statement at pp. 46-47 of the Appendix).

A second indication of the general change is that the percentage of employees of manufacturing industries in Canada resident in the Prairie Provinces is increasing, whereas the percentage of manufacturing workers in the United States who live in the Spring Wheat States has decreased ever since the end of the first War. (See Chart and Statement at pp. 48-49 of the Appendix).

Relative growth is also shown in such items as motor vehicle registration and the development of coal resources.

It is, of course, too early for the effects of the oil and gas developments now going on to do more than barely show themselves in the available statistics, but it is not improbable that this is going to be the major factor in the growth of the Prairie Provinces over the next twenty-five years. What they have done to date, they have done upon an agricultural base. When their wealth in petroleum has had a full opportunity to bring into existence all the complementary production which will be essential to exploitation of these resources, the comparison

with the Spring Wheat States will be strongly in favour of the Prairie Provinces.

The picture here, then, is one of an area which has held its population more effectively than the parallel area to the south; which is processing more of its native raw materials as time goes on; and which has before it the brilliant prospects based on the new oil discoveries.

British Columbia as compared with the State of Washington.

Broadly speaking, British Columbia has kept in step with Washington throughout its history and since 1920 it has increased at a more rapid rate. The population of British Columbia is not only increasing more rapidly, but it is becoming a larger percentage of the population of Canada more rapidly than Washington is growing in the United States. (See Chart and Statement at pp. 50-51 of the Appendix). The other indices of economic development bear out this statement. This is not a matter of developing a large sub-standard population, but of developing one which has high economic standards. It is a development out of strength and not out of weakness.

All the foregoing comparisons of economic progress in Canada and in the various areas of Canada with economic progress of the United States, and of the areas in that country comparable with those studied in Canada, are fully supported by the pertinent statistics and graphs to which reference has been made.

The general conclusion which must be reached is that this attitude of denigration of Canadian achievement and envy of United States may have had some ground in the latter half of the 19th century. It has no demonstrable ground today. Canadian progress holds up against that of the United States. The areas from which complaint is heard have fared better inside the Canadian economy than have the corresponding areas of United States fared inside the American economy. It is probable that the root of the difficulty is not the present burden, but merely the uncritical

repetition of a complaint which was at one time justified, but of which few of those who voice it have had any direct experience.

In addition Canadian Pacific reminds your Commission that freight rates are in general considerably lower in Canada than in the United States. This is shown by the only general index -- that of revenue per ton mile -- which is lower in Canada than in the United States.

Thus, freight rates in Canada, as far as they play any part in permitting the free and full development of the economy, have clearly not been too high. Canadian Pacific submits, indeed, that there may be instances in which freight rates in Canada are too low, to the extent to which they tend to destroy advantages which some sections of Canada may have in respect of the possession of natural resources, on which local industry can be founded, but which tend to be exported from these areas to support industrial development in other areas of the country.

Certainly, the economic history of Canada provides no support for any theory that either the general level of freight rates, or the method by which they have been established and regulated in the past, have been responsible for inhibiting the normal development of the nation. In this connection, Canadian Pacific draws particular attention to the comparison of freight rates in Canada with those in the United States.

The suggestion is made that the economic independence of this nation has forced trade into East and West channels, when North and South movement would be normal, with the result that Canadian producers and consumers suffer from improperly high transportation charges.

Were this the case, it must be clear that the blame could not lie on Canadian railways, nor would there be justice or expediency in forcing Canadian railways to make the necessary compensation for any mistakes which may have been made in tariff policy.

It is not the intention of Canadian Pacific to discuss tariff policy. The railway system was built after broad national policies were established. The railways did not initiate these policies, nor were they initiated for their benefit. Accordingly, the railways can take no responsibility for defending them, nor the duty of examining them critically.

What can be pointed out is that there is every reason to believe that trade in Canada would still tend to move East and West not North and South in respect of many important commodities, were this country to engage in economic union with the United States.

Wheat, for example, would still flow from the wheat growing areas to the Head of the Lakes or to the Pacific Coast, if economic union were established. Wheat from the Prairie might move to Duluth, instead of Fort William and Port Arthur, or to Seattle, instead of to Vancouver. The distance of movement would be substantially the same or slightly longer, and the charge for moving a bushel of wheat would be more than doubled.

It must not be forgotten that economic union between the two nations would, among other consequences, inevitably produce transportation charges in Canada such as now exist in the United States.

It would still be the case that motor cars would move to Western Canada from the banks of the Detroit River. Freight rates on motor cars from Windsor to Prairie points are cheaper than those from Detroit to similar points South of the border. The same thing is true of agricultural machinery, and it is equally true of lumber, which moves from British Columbia to Central Canada more cheaply than does lumber from the United States Pacific Coast to the industrial areas of the Eastern and Central United States.

The illusion that traffic has been forced into unnatural East and West channels in Canada is exploded by an examination of railway maps and railway traffic statistics of the United States.

There has been the same tendency to East and West movement in that country, in the areas contiguous to Canada, and there is no reason to believe that there would have been any substantial alteration in the internal trade pattern of either of the two countries, if they had developed as a single economic unit. Notable exceptions to this might very well have been a failure to develop Canadian seaports and Canadian industrial and commercial centres to the present extent.

In discussing this question with reference to Western

Canada, it is pointed out that the railway lines running north and south of the Great Lakes had been used. That burden has not caused railway rates between Central and Western Canada to be as high as those on the more fortunately situated railway lines in the United States. This is clear from the table of rates at pp. 52-53 of the Appendix.

A similar situation exists in the case of the Maritime Provinces, and an excellent example is to be found in the fact that it costs much less to ship potatoes from Woodstock, N.B., to Toronto, Ont., than it does to ship this crop a similar distance in the United States from Houlton, Me., to Buffalo, N.Y.

Canadian Pacific does not intend to assert that there are no cases in which Canadian consumers would buy their goods somewhat more advantageously if the two countries were economically united. The greater populated area, the more convenient distribution of natural resources, the larger total population and the earlier development of the United States have led to their being opportunity for such cases. What Canadian Pacific submits is that the railways have done more than any other interest to overcome any disadvantages that may arise from Canadians trading with Canadians.

Broadly speaking, Canadian Pacific is of the opinion that

economic union of the two countries would still leave the great bulk of Canadian internal trade moving as long distances as at present and paying at least as high, if not higher, freight charges.

A comparison of many freight rates in Canada which move large volumes of traffic, with freight rates in the United States on similar movements, will demonstrate the lower level of rates applicable to Canadian shippers. (See Appendix pp. 54-55)

OUTLINE SUBMISSION

"35. Canadian Pacific is opposed to the extension to other parts of Canada of legislation in the pattern of the Maritime Freight Rates Act. Such legislation imposes rigidities upon the freight rates structure which, in the submission of the Canadian Pacific, can lead only to sectional strife and to litigation. Canadian Pacific does not propose the repeal of the Maritime Freight Rates Act but it does suggest that it would be unfortunate to adopt the principle of that Act as a solution to the so-called geographical disadvantages which are alleged to exist in certain parts of Canada."

FURTHER SUBMISSIONS

Canadian Pacific does not propose that there should be any alteration in the Maritime Freight Rates Act, but does urge your Commission to recommend that this principle be not extended to any other area.

The plan of assisting the economy of the Maritime Provinces, by providing a Government subsidy in respect of traffic within and outbound from that area has now been in effect for many years, and, under it, there has been established in the Maritime Provinces a certain amount of industrial and other development which might possibly not have taken place in that area without this plan. In short, there are now vested interests in this plan on which there probably depend some employment and some return on investments, both of which might easily be destroyed by abolishing or drastically altering the system. This would seem to be an adequate reason for maintaining it for the present.

However, Canadian Pacific submits that there are grave

reasons for feeling that it is not desirable to attempt to aid the economy of any area of the country by transportation subsidies.

There is no reason to believe that this method of assistance to any area encourages normal and desirable economic development in that area, and, indeed, the effect may be in quite another direction. This plan may produce the establishment in any area of industrial or other developments which are not economically justified. It may lead to an undue emphasis on the production for sale in other areas of unprocessed raw materials which, under some other plan, might contribute more effectively to economic progress were they to be processed within the area.

If it be accepted -- as was the case in the studies leading to the passing of the Maritime Freight Rates Act -- that any particular area of Canada is at a general economic disadvantage as compared with the rest of the nation, then Canadian Pacific submits that any subsidy granted by the Dominion Government for the relief of this condition should be distributed to all economic interests within the area according to their needs. In this way, there would be no tendency for the use of such a subsidy to direct the economic activities of the area in any particular direction, but all activities within the area would be given assistance where necessary.

The argument is that assistance to the economy of an area by means of a transportation subsidy tends to stimulate those industries in whose affairs transportation costs are a large factor, in preference to those industries in whose business the burden of transportation is a small one. Such a system, while possibly stimulating certain forms of economic activity may actually deter the creation of a fully rounded economy.

Canadian Pacific has no suggestion to make for any particular method of distributing such a subsidy, but does believe that, on full investigation and consideration, it will be decided that it should not be distributed in respect of one specific factor, such

as transportation of goods within and out of the area.

The further, and fatal objection, in the opinion of Canadian Pacific, to the principle of transportation subsidies is that it can only end in vicious competition between various areas, transferring transportation costs from those who use transportation to the taxpayers at large.

If there be two areas, A and B, which trade with each other, and if the goods which A ships to B receive a subsidy in respect of transportation, to the advantage of economic development in area A, then every argument will exist for their being similar treatment applied to the shipment of goods from area B to area A. In such circumstances all that would occur would be a subsidy from the taxpayers of the two areas, as well as all taxpayers of Canada, to the transportation of goods between the two areas -- creating the unfavourable effect of all general subsidies on transportation, in the direction of causing unnecessary use of this service, and thus imposing an unfortunate burden of wasted effort on the economy as a whole.

In short, Canadian Pacific feels that it would have been wiser to have granted any assistance which was needed by the economy of the Maritime Provinces by some other method than the one which has been adopted, but certainly does not suggest that subsidies under the Maritime Freight Rates Act should be terminated, unless and until very full and careful examination of the problem should indicate that this could be accomplished, and a more suitable form of subsidy provided, without creating an unfortunate disturbance of the economic developments which have occurred as a result of the Maritime Freight Rates Act.

Certain suggestions have been made from time to time in the 21% Case, and to this Commission, that the methods and principles applied in the Maritime Freight Rates Act should be used in other areas to alleviate disadvantages claimed to exist in those areas.

Canadian Pacific submits that any such step would be detrimental to the national interest, resulting in serious rigidities in the freight rate structure, constant litigation, and a never-ending succession of claims for extension of the concessions granted.

The numerous cases relating to the Maritime Freight Rates Act heard by the Board of Transport Commissioners and the Supreme Court of Canada and the arguments presented on behalf of the Maritime Provinces in the 21% Case, and in the present proceedings, give an indication of the claims that arise as a result of an Act of this kind and the persistence with which they are pursued. The claims and demands made by the Maritimes in the present proceedings are not new; many of them have been examined in the past by the Board of Transport Commissioners, and some by the Supreme Court of Canada, but findings that they are unsound or unwarranted merely give rise to an outcry for changes in the legislation.

For example, in the case of Transportation Commission of Maritime Board of Trade v. C.N.R., 37 C.R.C. 354, it was argued that the eastern proportion of a through rate should be deemed to be the local rate in effect from the point of shipment on Eastern Lines to Levis or Diamond Junction prior to July 1, 1927, and that the 20% reduction imposed by the Act should be applied upon this proportion of the total rate. As pointed out by the Board at p. 367 this would in many instances be the equivalent of a 20% reduction in the whole of the through rate. The Board added (p. 368) that from the wording both of the Duncan Report and the Act, it was "fundamental and beyond dispute" that there was to be a pro rate of the through rate on a mileage basis. Nevertheless, similar demands are being made today. (pp. 3297-98, 3665-66, 3934 of transcript).

Again, in Transportation Commission of Maritime Board of Trade v. C.N.R., 44 C.R.C. 289 (the Potato Case) it was argued by the Maritimes, first that it was incumbent upon the Board to reduce proportionately rates on preferred movements whenever competitive

rates were put into effect elsewhere, (pp. 292-3, 297) and secondly that the mere production in evidence of such competitive tariffs was sufficient to bring about this result, without proof of prejudice (p. 298). The Board denied both of these claims, holding that its only power under the Act was to cancel the competitive rates, and that it could only do so when proof was forthcoming that such rates might "destroy or prejudicially affect" the advantages given by the Act to Maritime shippers. This decision was appealed to the Supreme Court of Canada and was there upheld (47 C.R.C. 161). Nonetheless, the Maritime Provinces are still pressing the same claims (pp. 3528-31 of transcript). Their position is that if the Maritime Freight Rates Act is subject to the interpretation placed upon it by the Board and the Supreme Court, it should be amended to require rates on preferred movements to be reduced proportionately to competitive rates elsewhere. Since there is no prejudice from railway competitive rates whose cancellation will merely result in transfer of the traffic to other carriers at the same rates, the present Maritime proposal must obviously be intended to compel the reduction of rates on preferred movements even when no prejudice exists from the competitive rates. Otherwise no benefit will be derived by the Maritimes from the change.

The introduction of a plan of concessions in freight rates becomes the signal for demands for further concessions and extensions of the privileges granted. Examples of this may be seen in the present agitation of the Maritimes for an increase in the percentage deducted from the normal tolls (pp. 3297, 3664-65, 3934, 4687-(82)), an extension westerly of the distance for which the deductions are to be made, (pp. 3297-98, 3665-66, 3934), the application of the Act to eastward movements of certain commodities into select territory (pp. 3298, 3934, 4687-(82)), and the reduction of the Maritime arbitraries, (pp. 3658-64). Each one of these demands would carry concessions to the Maritimes farther than either the Duncan Commission or Parliament thought necessary. The granting of

any of them would merely form the starting-point for fresh claims.

The national economy is best served by a system of freight rates that has a certain flexibility in all its parts, in order that the maximum of traffic may be encouraged to move in every region at reasonable rates. When there is introduced into this structure a set of artificially fixed rules applying to one area, the rigidities and abnormal results thereby brought about extend far beyond the specially treated area, to the detriment of the economy in general.

For example, it may be found impossible to grant commodity rates for development purposes to an industry in non-select territory if such action will compel reductions on a substantial volume of traffic in select territory. The constant effect of such an Act is to keep certain rates in select territory unduly depressed when they might properly be raised, and to maintain certain rates elsewhere at a level higher than in the interests of shippers and the railways they should properly be.

When general adjustments are made in the rate level, further rigidities and anomalies arising out of the existence of the Maritime Freight Rates Act become apparent. For example, it was argued for the Maritimes by Mr. Burchell in the 21% case (pp.17749-52) that whatever may be done with rates in the rest of Canada, no change can be made in the level of rates on preferred movements until it has been affirmatively proved that the cost of railway operations in Canada is not the same as it was upon the date in 1927 when the Act was passed. It is hardly necessary to point out the impossible position in which the railways would be left if such an argument were accepted. The obligation to produce conclusive evidence in every future rate case as to the cost on a specific date in 1927 of "railway operation in Canada" would lend such opportunities for objection, debate and obstruction as to delay indefinitely any adjustment in the rates.

Secondly, the argument has even been advanced (Mr. Burchell, pp. 17752-70, 21% Case) that no adjustment or variation in the rates reduced under the Act is permissible to meet new industrial or traffic conditions except in a downward direction. While it is true that the Board of Transport Commissioners rejected this interpretation, it is an example of the extent to which argument may be carried in relation to an Act of this kind. If Mr. Burchell's interpretation were correct the railways would be most unlikely ever to grant any new commodity or competitive rates in the Maritimes, as once granted they could not be increased except upon a showing that the cost of operation in Canada has increased.

Mr. Matheson presented much the same viewpoint in the present proceedings, when he proposed (pp. 3763-64) that in the event of a finding of unjust discrimination the railways should be denied their option of removing the discrimination by increasing the lower rate to meet the higher. This suggestion, if put into effect, might result in a rate being reduced regardless of the ability of the traffic to support the higher rate.

Perhaps one of the most serious consequences of a policy that would apply the Maritime Freight Rates Act principle to other areas would be that it would have no logical stopping-point short of nation-wide application. Every province, city and town in Canada has its advantages and disadvantages, geographical and otherwise, and compensation given for that reason to one should justly be given to all. It should be noted as well that any reduction given in this way outside the Maritimes would probably result in claims for still further reductions to the Maritime Provinces themselves.

It is most important to observe in this connection that the Maritime Freight Rates Act itself did not have as its object the overcoming of any of the normal geographical disadvantages of the Maritimes. Both the Duncan Report and the preamble to the Act indicate the sole purpose to be the assumption by the Dominion of such

extra transportation costs as were brought about for national, imperial and strategic reasons. So long as the Act is limited in its application to these purposes it is not a precedent for the subsidization of geographical disadvantages elsewhere. The extension of that Act or the passing of a new one for purposes beyond these primary contractual and historical obligations would open the way for the application of the subsidy principle to all parts of the country.

If on the other hand certain areas were to be given preferred treatment for geographical or economic reasons the result would be the antithesis of the equalization of freight rates that has been so persistently sought by many parts of the country. To accept one principle would be to deny the other, and of the two it is submitted that equalization is the preferable course.

Finally, the use of the railways as a medium or instrument whereby to distribute subsidies to producers might well result in grave consequences to the railways themselves. It would be inevitable that in the public mind the distributor of the subsidy would come to be regarded as its receiver. Payment of large sums of money by the Government to a privately owned railway, even though such sums were in consideration of the maintenance of unduly low rates, would give strong encouragement to interests desirous of exerting political influence upon the railway. Such a proposal, if adopted, might well become a major step towards socialization of private railway enterprise.

Incidence of freight charges.

The Commission will have noted the frequent statements from various sections and interests that each of them pays all the freight on everything bought and everything sold. Canadian Pacific urges that there should be wise counsel given to the nation on this point; that it should be made clear that this statement is true of no one; that the incidence of freight charges is on the

economy as a whole; that it is totally impossible to draw lines on the map, or to establish distinctions between groups or individuals, and to assert that this area, that group, or a certain type of individual is more burdened by transportation costs than is some other.

Canadian railways have, in face of great difficulties, furnished the Canadian economy with cheap and efficient service. The urgent problem -- the only urgent problem -- is to permit them to continue thus to serve the nation, and especially the areas which, for geographic reasons, are under any disadvantage in respect of transportation.

Unless it be possible to obtain a steady input of wisely invested capital into the national transportation system equal to the annual expansion of national productivity, which is estimated to be approximately 3 per cent, there can scarcely be any hope that the economic progress of the past can be maintained in the future, and Canadian Pacific submits that it would be in the national interest for your Commission to make this one of your principal recommendations.

It is in this direction, and not in experiments with new methods of establishing freight rates that lies the correction of any disadvantages in respect of transportation under which any section of Canada, or group of Canadian citizens may now labour.

Further submissions on this subject will be found in Part II of this Submission.

OUTLINE SUBMISSION

"Clause 2(b) of the Order-in-Council provides:-

'2(b) Review the Railway Act with respect to such matters as guidance to the Board in general freight rates revision, competitive rates, international rates, etc., and recommend such amendments therein as may appear to them to be advisable.'

GENERAL FREIGHT RATES REVISION

2a. Canadian Pacific submits that the principles of rate-making at present laid down in the Railway Act and in the decisions of the Board of Transport Commissioners are sound and in the public interest and do not require any substantial amendment.

37. The regulation of rates under the Railway Act is intended to provide flexibility and freedom to the activity of railway companies to make rates subject only to proper protection against abuses. When the system outlined in the present Railway Act was first established, railways, subject only to competition from water carriers, had a substantial monopoly of transportation. They provided a service which was as essential to the development of resources and industry in Canada as it was necessary that the monopoly they held should not be exercised in such a way as to prejudicially affect the different groups of shippers and the different geographical areas in which these shippers carried on business. It is hardly open to question that the railways have now lost the monopolistic position which they then occupied.

38. In the submission of Canadian Pacific any change in the system of rate-making now set forth in the Railway Act should be in the direction of affording greater flexibility and freedom to the railways than during the period when they enjoyed substantial monopoly.

39. The principles of rate-making laid down in the Railway Act are relatively simple. It is provided that rates shall be just and reasonable. This means that they shall be just and reasonable to the railways as well as to the shipping public.

In order for rates to be just and reasonable to the railways the revenue derived from the mass of rates for the movement of all the traffic must be sufficient to pay operating expenses and taxes and to provide a reasonable return on the capital invested in the railway enterprise.

In order for rates to be just and reasonable to the shipper the Railway Act provides the following protection:-

(a) It provides that rates shall not exceed the so-called maximum or standard tariffs which all railways are required to file and have approved by the Board of Transport Commissioners. These rates may not be increased without approval of the Board. The railways, however, are free so long as they do not exceed these maxima to make rates lower than the maxima, designed to develop industry, to move the maximum amount of traffic and to meet competition.

(b) The Railway Act, in particular by Sections 314 to 321 inclusive, provides adequate machinery for ensuring that all tolls shall always, under substantially similar circumstances and conditions, in respect of all traffic of the same description, and carried in or upon the like kind of cars or conveyances, passing over the same line or route, be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise. These sections together with the decisions of the Board over a period of many years, have provided and are continuing to provide the greatest possible protection against abuses and in ensuring that rates shall be just and reasonable to the shipper.

40. It is obvious, in the submission of the Canadian Pacific, that the cost of service principle cannot be applied in the making of individual rates or scales of rates. "

FURTHER SUBMISSIONS

Canadian Pacific submits that the cost of service principle is unsound.

In theory under the cost of service principle the first point that would have to be decided is whether costs are to be determined on a local, regional or system basis. This point having been decided, the next step would be to ascertain the cost of moving any particular commodity or class of commodities. It is recognized that some railway costs vary with traffic, other costs do not vary with traffic and are constant. It is further recognized that the percentage of costs which vary with traffic is greater in the long term sense than in the short term sense.

Under the cost of service principle of rate making, the cost of moving traffic is, in respect of any commodity or class of commodities, not only the cost that varies with traffic but also the proportionate share of the constant costs which do not vary with traffic. Thus under the cost of service principle rates would be fixed so that each commodity or class of commodities would bear, what may be termed, the all inclusive cost of moving the traffic in question.

If all traffic were to bear its all inclusive cost, many changes in rates would be necessary. The rates on traffic which are higher than the all inclusive cost of moving that traffic would have to be reduced. The rates on traffic which are lower than the all inclusive cost of moving that traffic would have to be increased because the over all level of railway costs must be returned from the total traffic moving. It is obvious that the total volume of traffic now moving on Canadian Railways would be materially lessened. For example, transportation costs are a small proportion of the selling price of silk but are a relatively high proportion of the selling price of coal. It

therefore follows that if transportation costs of silk are increased it will have little effect upon the selling price of the silk, thus the demand for silk will not thereby be reduced. On the other hand, an increase in the cost of transportation of coal can have material effect on the selling price of coal, thus the demand for coal would be reduced.

Conversely, reduction of the transportation costs of silk will not increase the volume of silk available to the railways for transportation, but reduction in the cost of transportation of coal may very well make available additional volume of coal traffic for the railways.

A reduction in the volume of traffic available to the railways would increase the amount of unused plant capacity. The basic fundamental of rate making is to use the railway plant most effectively. The most effective use of a railway plant is to increase the volume of traffic moving over it so that the unused capacity of the plant is at the minimum. Under the cost of service principle, however, the railways would be unable to make rates below the all inclusive cost because the amount of the reduction below such costs could not be made up from traffic moving at rates higher than the all inclusive cost. The result would be to increase the amount of unused plant capacity.

The advocates of the cost of service principle contend that adherence to that principle would result in a new rate structure more favourable to the highly rated classes of traffic. Canadian Pacific disputes this contention because in its opinion such a result would be only temporary. The contention overlooks the fact that, having lost the traffic which could not bear rates based on all inclusive costs, the railways would lose the contribution made by that traffic towards constant costs. The railways would also have lost revenue from the highly rated classes of traffic in proportion to the reduction in the rates

the fact traffic to bring them to the full allocated overhead. But would the volume of the highly rated traffic increase materially because, broadly speaking, freight charges constitute only a small proportion of the total value of the goods carried by the highly rated traffic. Consequently a marked reduction in freight rates would have only a minor effect on the over all price of, and demand for, such goods. The final result, therefore, would be that the railway would be left with a smaller amount of traffic over which this overhead cost could be distributed. To recover these costs, therefore, it is axiomatic that higher, not lower, rates would be necessary and the existing rate making principles and the present structure in the main would have to again become operative.

From the practical standpoint the cost of service principle is impossible to apply. It may seem to the superficial observer simple to ascertain what is the actual cost of service. In fact, however, the problem of disentangling joint costs is one of great magnitude and complexity and unless the volume of traffic being considered is a fairly large proportion of the total traffic moving over the railway, an allocation of many costs must be made on the most arbitrary basis. It has been stated on numerous occasions by accountants and economists that railway operations do not lend themselves to cost accounting.

The railway plant produces a variety of services. There are passenger services and freight services. There is carload freight traffic and less than carload freight traffic. Services of the railway vary. The type of equipment, terminal handling and auxiliary services provided by the railway depend upon the commodity. There is the effect of the direction of the flow of traffic and the necessity to attempt to balance this flow in the interests of efficiency and overall lower costs. There are also seasonal fluctuations in traffic and the varying climatic conditions under which the service is performed.

Under the "value of service" consideration must be given to the compensatory nature of the rate. A rate is compensatory if it returns something more than the out-of-pocket costs, which are the additional costs incurred by the railway in handling any particular traffic.

Special class, commodity or competitive rates are only put into effect when there is a necessity to do so. Before such rates are put into effect the traffic officers of the railway consider the compensatory character of the proposed rate, either by reference to statistical averages or special studies. System and regional average car mile and ton mile revenues are available. Rates are assumed to be compensatory if they exceed these system averages, always assuming that the level of rates is such that the system averages are in themselves compensatory. If the rate necessary to move the traffic is lower than these averages, further consideration to the matter is given. Special statistical studies, taking into account operating factors, are made. Where the volume of traffic is substantial, in addition special field studies are made. If the special studies disclose that the proposed rate is either greater than all-inclusive cost or somewhat higher than out-of-pocket cost, it is taken as compensatory. If the proposed rate is below out-of-pocket cost, it is the policy of Canadian Pacific not to put such a rate into effect.

Within the upper limit set by the overall railway costs and the lower limit set by out-of-pocket costs, value of service is the determining factor.

That the system of rate making as followed by Canadian Pacific is an effective and proper rate making system, has received authoritative recognition. For example, the Interstate Commerce Commission, "Explanation of Rail Cost Finding Procedures and Principles Relating to the Use of Costs" deals with the subject at pages 17 to 19 and states at pages 18 and 19:-

"When brought within proper bounds, the 'value of the service', i.e., the conditions of demand, plays an indispensable function in the apportionment of constant and joint costs. It is not just a substitute for inadequate cost data. It means, in effect, taking advantage of a condition of expansible traffic volume where the traffic will respond to rate reductions, the results being the encouragement of the maximum utilization of the carrier's plant and equipment, the distribution of the constant costs over a larger volume of tonnage, and the attainment of a lower level of rates on all traffic, the high-rated as well as the low-rated, than could be realized if differences in rates were limited solely to the differences in cost of service.

The analysis of value of service or demand considerations is obviously something quite separate and apart from cost analysis. It frequently involves the appraisal of economic factors which are much more intangible than those encountered in cost finding."

OUTLINE SUBMISSION

"1. General freight rate revisions are required when the level of rates authorized becomes unjust and unreasonable to either shippers or the railways on account of changing conditions or cost of transportation but these can best be carried out by the Board of Transport Commissioners within the framework of the Railway Act and in the light of the knowledge and experience of the Board and its staff. "

FURTHER SUBMISSIONS

In order that freight rates shall remain just and reasonable to both the shippers and the railways the general level of rates will require adjustment at times to meet changing conditions, especially in the case of wide changes in the general price level which directly affect railway operating expenses as well as commodity prices.

Canadian Pacific does not suggest that, in periods of rising prices, the increase in the overall level of freight rates must necessarily equal the increase in the general price level; conversely during periods of falling prices the reduction in the level of freight rates cannot be in step with price reductions. The two must proceed in the same direction, but not necessarily in direct relationship to price levels.

The Board of Transport Commissioners is equipped to determine from the standpoint of fairness to both shippers and railways, the necessity for and extent of changes which should

be made from time to time in the general level of freight rates under their jurisdiction. If free to make their enquiries and to render their decisions within a reasonable time, the interests of all parties are fully protected.

OUTLINE SUBMISSION

"42. Canadian Pacific submits that in order that rates be just and reasonable to the railways, the general level of rates should be such as to provide an equitable return on the investment in railway property used in transportation service.

43. The present jurisprudence in public utility regulation holds that historical book investment are the best evidence for establishing a rate base. The necessary data in regard to the investment of Canadian Pacific is available in the records of the Company. No need, therefore, exists for a prolonged and expensive investigation into the value of the property used in transportation service.

44. In establishing a fair rate of return, the matters to be considered include the need for raising new capital in the financial markets in competition with other seekers of capital. In 1948 the rate of return obtained by the Company on its depreciated book investment in railway property was 1.78%, whereas studies have shown that the cost of capital employed in the railway enterprise at the end of 1948 was not less than 6.52%. The serious handicap facing the Company in raising new capital under present conditions is indicated by this comparison.

45. It is submitted that no amendment is necessary to the Railway Act of Canada to apply the principle of fixing general rate levels on the basis of a fair return on the investment in railway property used in transportation service. The determination of investment in such property and of the rate of return are matters which should properly be left to the Board of Transport Commissioners."

FURTHER SUBMISSIONS

In the recent applications of the railways to the Board for general increases in freight rates, Canadian Pacific submitted at the outset that it should be allowed a fair rate of return on its investment in railway property, less depreciation, and evidence was tendered, which in the 20% Case went in great detail, to show the amount of this investment from the books of the Company.

There are, of course, several other recognized methods of arriving at a rate base upon which to calculate the rate of return. One is by the use of the existing debt and stock

capitalization of the company, an attempt being made to develop the rate that should be earned by each type of capital. Another method is to restate the actual book figures of investment in terms of the higher value of the dollar existing when the investment was made, or in other words, to increase the investment by the amount that the dollar has depreciated, in order to maintain a figure of investment stated in terms of dollars of present purchasing power. A third method, advocated in some quarters, is to adjust for the depreciation of the dollar only in respect of the equity capital employed, on the theory that debt capital will be repaid in nominal dollars and therefore need not be given an appreciated value in nominal dollars. Finally, there is the method adopted by many tribunals in earlier years of making a detailed appraisal of reproduction cost new, less observed depreciation, of railway property.

The appraisal method contains serious disadvantages that do not pertain to the other plans. First, a detailed valuation of the assets of a company such as Canadian Pacific would require at least several years, and would cost many millions of dollars. Secondly, many of the valuations would undoubtedly be challenged, and the ensuing arbitrations would consume additional time and money. It must of course be obvious that an appraisal made on the basis of present costs of property, labour and materials would produce a rate base very far above the total of the book investment.

In the light of these considerations it is not surprising that in recent years regulatory tribunals in the United States such as the Federal Power Commission and the Interstate Commerce Commission have rejected estimates of reproduction cost on the ground that they are lacking in reliability and too conjectural to have probative value, and have adopted historical book records as the best and only reliable evidence for establishing a rate base. This action has been fully sustained

by the Supreme Court of the United States, and in Canada the example so set has been adopted by at least one public utility commission. A concise and learned exposition of the decisions establishing this jurisprudence will be found in the address made to the Board of Transport Commissioners on behalf of the Canadian Pacific in the 20% Case by Mr. A.J.G. Priest of the New York Bar, commencing at p. 3959.

The book records of the investment of Canadian Pacific in railway property used in transportation service are set forth in Exhibit (49)-49 filed in the 20% Case. They show that after deduction of depreciation, the investment in the railway enterprise as of December 31, 1947, was \$1,001,337,371. It is upon such a depreciated investment base as a minimum that, in the submission of Canadian Pacific, a rate of return should be calculated. The rate of return would, of course, have to be adjusted from time to time to reflect changing economic conditions.

In dealing with Canadian Pacific book investment figures it is important to note that until 1930 in respect of equipment and until 1942 in respect of depreciable road property the company followed the renewal accounting system. The effect of this method of accounting is to produce an understatement of the book property investment. This is because expenses are charged with the cost of renewal in kind and no increase in the property investment on the books takes place, even though the cost of replacement may vastly exceed the original cost of the asset being replaced. When depreciation accounting was undertaken, the amount of the investment in equipment was restated to original cost and a corresponding increase made in the depreciation reserve. In the case of road property it was not possible to assess exactly the amount by which book cost understates actual cost, but it is known to be substantial. This must be so because despite interruptions to a minor extent, there has been an almost continuous trend of upward prices since the incorporation of the Company in 1891.

It is, therefore, clear that in the case of Canadian Pacific the adoption of a depreciated book investment base is even more conservative than the historical cost base which is now generally adopted in the United States.

The historical cost base is in turn exceedingly conservative as compared with an attempt to measure the rate base in terms of dollars of present day purchasing power. Mr. H. B. Dorau of New York University, an economist with a wide experience in public utility matters, who was called as a witness by Canadian Pacific in the 20% Case, showed in his Exhibit (49)-90 that this adjustment alone would bring the 1947 property investment of Canadian Pacific up to \$1,870,070,000. Again, this method is in itself conservative as compared with the adoption of a base which represents reproduction cost. There are proponents of all of these methods, but there are no suggestions by any authorities that a rate base should be less than book investment, where that book investment is less than actual historical cost.

With a rate base established, it becomes important to examine the essential elements of a fair return thereon. The principles laid down by the U.S. Supreme Court in *Bluefield v. Public Service Commission* (1922) 262 U.S. 679, at pp. 692-4 have been accepted as the most complete and authoritative pronouncement upon this question. The passage referred to reads as follows:-

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to

"assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally . . .

Investors take into account the result of past operations, especially in recent years, when determining the terms upon which they will invest in such an undertaking. Low, uncertain or irregular income makes for low prices for the securities of the utility and higher rates of interest to be demanded by investors".

For the purpose of the 20% Case two extensive studies were made on the basis of these principles. The first was by Mr. Northey Jones, of the firm of Morgan, Stanley & Co., whose evidence will be found commencing at p. 2452 of the transcript of that case. His approach was to determine the rate of return that Canadian Pacific would require to enable it to re-establish its credit in the money market and finance its needs through the issue of debt and equity capital. The outcome of this study was a minimum figure for rate of return of 6.6% on the net investment in railway property at the time the study was made.

The second study was that of Dr. Dorau, Professor of Economics, New York University, whose evidence commences at p. 2732 of the transcript in the 20% Case. Dr. Dorau's view, after careful examination of all the important economic factors bearing upon the question, was that a fair and reasonable rate of return upon the net railway investment of the company would be 8.2% at the time the study was made.

In the Ottawa Electric Case, (59 C.R.T.C. 136), the Board of Transport Commissioners allowed a rate of return of 5.6% on an undepreciated rate base. This would be the equivalent of 7.5% on the depreciated rate base of the Canadian Pacific of about one billion dollars. The Interstate Commerce Commission, in ex parte 166 (April 1948 - 270 I.C.C. 403), in awarding a general increase to United States roads, provided a rate of

return to Class 1 U.S. Roads of 5.7%. In view of Dr. Dorau's evidence in the 20% Case (p. 2741) that the cost of money in Canada currently exceeded that in the United States by about one half of one per cent, the decision of the Interstate Commerce Commission in applying its precedent for allowing the Canadian Pacific a rate of 6.2% on its depreciated investment. Incidentally, the rate base used by the Interstate Commerce Commission in the last two general increase cases has been historical cost, less book depreciation.

Dr. Dorau, in his evidence, also showed by Exhibit (49)-78 in the 20% Case, that the average rate of return in 1947 earned by Canadian Industries other than railways was more than 12% on the undepreciated investment base.

It should here be recalled that in contrast to these figures, the Board in the 21% Case allowed a level of rates which, in the case of Canadian Pacific, would result in a rate of return on its depreciated base of only 5.2%. However, the rate of return actually received by the Company in 1948 was 1.78%. Canadian Pacific submits that in the circumstances the return that resulted from the Board's judgment in the 21% Case was too low.

The Board's discretion is not limited by the Railway Act as to the manner in which it may determine a just and reasonable level of rates. On the other hand it would be highly undesirable in the interest of the economy of the country, as influenced by the financial well-being of its railways, to impose any limitations upon the Board's discretion in this respect.

OUTLINE SUBMISSION

COMPETITIVE RATES

46. Competitive rates are made for the sole purpose of obtaining traffic that otherwise would be lost to the railways. The rate of a competitive rate is not set by the railway but by the competition. A railway has, and necessarily must have, the privilege and responsibility of deciding whether to establish a competitive rate or forego the revenue which could be derived from handling the traffic.

47. As competitive rates are made with particular regard to the traffic on which they are to apply, they cannot be applied as maxima to intermediate points where similar competition does not exist.

48. When a railway, by reducing a rate to meet competition, secures or retains some remunerative traffic that it would not otherwise handle, there is benefit both to the shipping public and to the railway.

49. In such circumstances a community, in which the railway does not have to compete with other transportation agencies, does not suffer when the railway establishes competitive rates in another area. The lower level of transportation charges in the competitive area would be effective there even if the railway had not found it necessary to reduce its rates in order to secure or retain traffic.

50. An application of these principles is found in 'trans-continental rates' in effect between Eastern Canada and the Pacific Coast. These rates were established to enable the railways to secure traffic that would otherwise move by water carriers. These rates do not and should not apply to intermediate points, although in all cases the rate to the intermediate point should not and does not in any case exceed the sum of the competitive rate to the point beyond plus the rate on the return haul to the intermediate point. Competition forces exceptions to the long and short haul principle of rate-making and this is duly recognized in Section 314(5) of the Railway Act.

51. Canadian Pacific submits that the principles governing competitive rates as provided in the Railway Act are sound and no amendments are necessary or desirable."

FURTHER SUBMISSIONS

Competitive rates are published to meet the competition of trucking companies, water lines, short line competition of other railways and market competition such as the competition from the United States or European producers in the Canadian market.

In a number of the submissions made to your Commission and in the discussions at the hearings, it is quite evident that there is an assumption that competitive rates in Eastern Canada

and particularly the Provinces of Ontario and Quebec are unreasonably low and in some cases at least, do not pay their out-of-pocket costs. It will be, of course, important to determine whether this is true or not. It would be impossible for any Commission or for any group of individuals to determine definitely that there are no such cases but it is quite possible, as will be shown in the course of this submission, to arrive at a conclusion as to the large body of competitive rates. Canadian Pacific submits that, on the whole, competitive rates are on a compensatory basis.

In any consideration of the question as to whether rates are compensatory, it is important to bear in mind the distinction between less than carload and carload rates. Traffic moving at carload rates is by far the larger in volume and produces by far the greater revenue as compared with less than carload traffic. This is true whether or not we are considering the matter of competitive rates. Less than carload traffic moves in much smaller quantities. In fact, in the year 1948 the average loading of less than carload traffic was 4.78 tons as compared with approximately 36 tons for carload traffic. On the other hand, the average revenue per ton mile on less than carload traffic is more than four times the average revenue per ton mile on carload traffic.

Less than carload traffic is handled through freight sheds whereas carload traffic is usually loaded or unloaded on shippers' sidings or team tracks by the shippers and consignees. In the result, freight shed costs are always incurred by the railway in handling less than carload traffic and are very infrequently incurred in handling carload traffic.

It thus becomes apparent that substantial costs are incurred in the handling of less than carload traffic as compared with carload traffic. It is no doubt for this reason, among others, that the same commodity carried in less than carload quantities takes a higher rating in the Classification. The

probability is, as will be later developed in this submission, that if any competitive rates can be considered as too low to meet out-of-pocket costs incurred by the railway they will be found in the competitive less than carload rates.

There was evidence in the 21% Case given by Mr. Knowles that in the case of the Canadian National, competitive traffic accounted for about 16% of the total revenue. There has been no information developed in detail as to the proportion of this 16% which is represented by less than carload business but it must be a relatively small proportion of it. It is thus clear that if the less than carload competitive rates prove in some cases to be non-compensatory when measured in terms of out-of-pocket costs, they must inevitably apply to traffic which is a very small proportion of the total traffic of the railways.

It should be pointed out that generally speaking, the less than carload competitive rates are effective in those areas in which the movements are relatively heavy and the loading per car for less than carload traffic is accordingly much higher in these areas than the system average of 4.78 tons. This aspect of the matter will receive closer attention as the submission proceeds.

As will be shown, less than carload traffic as a whole produces on the average revenue of only 21.4¢ per car mile, but in many cases in the areas where competitive rates are to be found, the car mile earnings on less than carload traffic are found to equal and even exceed car mile earnings on some categories of carload traffic.

The growth of motor truck competition was most marked in the period beginning about 1930. This coincided with the great

depression which began in that year and lasted for approximately eight or nine years. During this period not only was the cost of railway operation on a much lower level but the amount of traffic carried by the railways declined to an even greater extent. In the result, therefore, the railways had capacity which was to a large extent unused and at the same time substantially lower wage and material costs. It was therefore inevitable that there should have grown up in that period a very large number of competitive rates. It should occasion no surprise that this centred to a larger extent in Eastern Canada than in Western Canada. This was due to the greater density of population, the greater volume of commodities susceptible to truck competition in Eastern Canada, the proximity of cities and towns in Eastern Canada to one another and the development of a network of surfaced highways as well as the presence of the great waterway provided by the Great Lakes and the canal system in Eastern Canada.

When economic conditions changed and the war intervened, the railways were prevented from increasing their competitive rates by Order No. 92 of the Wartime Prices and Trade Board made pursuant to Orders-in-Council P.C. 8527 and P.C. 8528, dated November 1, 1941. By the time these Orders-in-Council came into effect only a few adjustments had been made in competitive rates to meet changing conditions. Order No. 92 remained in effect until September of 1947 and since that time substantial increases have been made in competitive rates in both Eastern and Western Canada as well as in the transcontinental rates. The process of adjusting these rates upwards in view of increased costs of operation, as well as the changing conditions in regard to competition itself, is continually going on. Apart from an increase in competitive rates of 15% in addition to the general increase of 21%, there have, up to the present, been a number of other increases in these rates and a number of them have been cancelled.

As to the compensatory character
of carload competitive rates

The Table at pp. 56-61 of the Appendix contains data with regard to representative carload movements in both Eastern and Western Canada which move at rates published to meet motor truck and/or water competition. The Table shows the length of haul, the rate charged, the minimum weight under the tariff, the average loading per car and earnings per car, per car mile and per ton mile. The rates applied were those in effect prior to the increase awarded by the Board on September 22nd, 1949.

The movements listed in the Table were not selected with the idea of showing only rates which are compensatory. The movements in Eastern Canada were picked at random from the tariffs after which the waybills were obtained from the Accounting Department records. These waybills were checked and the average weight taken for the first ten cars shipped in the year 1948. In a few cases the entire movement for 1948 was taken where the total movements amounted to less than ten cars.

In the data for Western Canada the average loading per car is based on the actual loading for all cars shipped in a period of one month, but not less than 10 cars, for representative movements subject to motor truck competitive carload rates contained in all items in the tariffs.

The following summarizes the data thus shown in the Table and compares the average hauls and the average revenue per car mile with the system average for all traffic carried by the Canadian Pacific in 1948:

	<u>Average Revenue at Motor Truck and/or Water Competitive Rates</u>		<u>System Average Rev- enue for Year 1948</u>	
	<u>Average Haul</u>	<u>Average Per Car Mile Revenue</u>	<u>Average Haul</u>	<u>Average Per Car Mile Revenue</u>
Eastern Region	293.9	62.4¢	298.7	36.3¢
Western Region	197.9	85.8¢	434.9	34.0¢
System	281.8	64.5¢	420.0	35.0¢

It can readily be seen that these rates are, generally speaking, compensatory because they are returning to the Canadian Pacific, revenue substantially in excess of the system average. This, though surprising to some, is true because the traffic which is susceptible to competition is by and large the highly rated traffic and a reduction in rates on this traffic can therefore be made in most cases without reducing the revenue per car mile or even the revenue per ton mile to a point below the system average.

There are, however, a few items in the Table to which attention is drawn. For example, the movements of automobiles are the only movements which yield substantially below the average per car mile revenue. A shipment of automobiles from Windsor to Montreal yielded earnings per car mile of only 22.2¢ and shipments from Oshawa to Quebec yielded only 20.7¢ per car mile whereas shipments from Oshawa to Three Rivers yielded 22.7¢ per car mile. It should be noted, however, that the ton mile earnings on this traffic vary from 4.17¢ per ton mile in the case of the Windsor to Montreal shipment, to 6.67¢ per ton mile in the case of the Oshawa to Three Rivers shipments. Low car mile earnings are therefore obviously due to the low average loading per car.

The normal rate on automobiles as established by the Classification is the first class rate with a minimum load of 10,000 lbs. per car. The first class rate for the distance from Windsor to Montreal is \$1.31 per hundred pounds and a shipment weighing 10,657 lbs. such as that shown as the first item of the Table would yield only 24.6¢ per car mile. This compared with the competitive rate of \$1.18 per 100 lbs. and a car mile earning of 22.2¢

Examples will be found in the case of cheese, printing paper, soap chips and apples in regard to which the car mile earnings are slightly below the average for the Eastern region. Of these

movements your Commission will also note that the ton mile earnings are well above the average except in the case of printing paper.

However, while these movements show car mile earnings of 35.8¢ for cheese, 33.5¢ for printing paper, 30.8¢ for soap chips and 34.1¢ for apples, these are only slightly below the Eastern average and in considering whether they are compensatory, regard must be had to the length of haul. Short hauls at low car mile earnings might not be compensatory whereas long hauls with the same car mile earnings might be compensatory. Your Commission will note that the average haul in the Eastern Region is 298.7 miles whereas the examples show a haul of 807 miles for printing paper, 506 miles for soap chips and an average of 328 miles for the four apple shipments. While it cannot be said that these are average hauls for these commodities at these rates, it has to be borne in mind that the rates on these commodities for shorter hauls would yield higher car mile and ton mile earnings due to the tapering principle, i.e., rates are relatively lower for longer than for shorter distances.

Motor Truck and Water Competitive Rates.

Rates published by the railways to meet water competition are maintained during the season of open navigation, generally from April 15th to November 30th of each year.

Rates published by the railways to meet motor truck competition, with a few exceptions, are generally in effect throughout the year as the highways are to a large extent kept open during the entire year.

Contrary to the opinion which seems to prevail in certain quarters, the railways do exercise a great deal of supervision with respect to rates which are published to meet motor truck and water competition. This is simply a matter of good business.

Following the increase of 15% in these rates in September 1948, a survey was made of all competitive rates to determine what further adjustments could be made due to changing conditions.

As a result of this survey many hundreds of these rates were found to be unnecessary to meet competition and were cancelled, allowing the normal rates to apply. In some cases there was no movement under such rates and in other cases the competitive rates were approximately the same as the normal rates due to the additional 15% increase referred to above.

In other cases it was considered that due to the rising costs of competing carriers, many increases could be made, some of a substantial amount.

When competitive rates are reviewed and a decision is reached to allow the competitive rate to remain unchanged, the Canadian Pacific has satisfied itself that not only would an increase in rate result in a loss of traffic but also that the rate as it stood was reasonably compensatory. In this connection, the practice followed by the traffic officers of the Company in determining whether a given rate is compensatory is to consider, among other things, the car mile and ton mile earnings, the length of haul, and the volume of traffic involved. If the car mile and ton mile earnings are at least equal to the average of the earnings on the system, it is considered that prima facie the rates are compensatory. In marginal cases such matters as length of haul, volume and direction of movement of traffic may be the determining factors.

There is, however, one class of rates which, in the view of Canadian Pacific, may not all be compensatory rates. These

are the "At and East" grain rates. These rates apply to the movement of grain from the so-called "Bay" ports, that is to say, Port McNicoll, Midland, Owen Sound and Goderich. Such rates are controlled during the summer months by water competition on the Great Lakes and St. Lawrence River. In the winter months, on the traffic moving to Saint John, N.B., such rates are controlled by the competition provided by the United States lines and their rates from Buffalo to New York. The mileage from Port McNicoll to Saint John, N.B. is 519 miles greater than the mileage from Buffalo to New York.

In the summer months the grain is shipped to St. Lawrence ports for export and when the shipping season is over at those ports all the shipments move to Atlantic ports. The rate to Montreal and Quebec from the Bay ports is 18.17¢ per 100 pounds. The rate to Saint John is the rate from time to time applicable from Buffalo to New York, which at present is 19¢ per 100 pounds.

RATE ON WHEAT, IN BULK, FROM PORT MCNICOLL, ONT. TO MONTREAL, QUE. AND WEST SAINT JOHN, N.B. FOR EXPORT

RATES AND EARNINGS

	<u>From Port McNicoll</u> <u>To West</u>	
	<u>To Montreal</u>	<u>Saint John</u>
Miles	448	915
Average bushels per car	1,750	1,750
Average weight per car	105,000	105,000
Gross rate	(a) 18.17¢	(a) 19.00¢
Earnings per car	\$190.79	\$199.50
Less elevation charge at Port McNicoll - per car	\$ 17.50	\$ 17.50
Less elevation charge at Montreal - per car	\$ 13.13	-
Less switching at Montreal - per car	\$ 6.00	-
Net earnings per car	\$154.16	\$182.00
Net earnings per car mile	34.4¢	19.9¢
Net earnings per ton mile	.66¢	.38¢
(a) "At and East" rate which includes cost of elevation at Port McNicoll and Montreal.		

The net earnings per car mile from Port McNicoll to Montreal are approximately at the 1948 system average of all traffic.

The net earnings per car mile from Port McNicoll to West Saint John are substantially less than the average, namely 19.9¢ as compared with the 1948 average of all traffic of 35.0¢ per car mile.

The above table shows that the ton mile revenue from Port McNicoll to Montreal is .66¢ but to West Saint John is only .38¢. In view of both the car mile and ton mile earnings it would appear that the rate from Port McNicoll to Montreal returns at least out-of-pocket costs but the rate to West Saint John does not provide sufficient revenue to meet out-of-pocket costs and is carried at an operating loss.

It should be borne in mind that the grain shipped from the Bay ports to the Atlantic ports for export must be looked at as part of a through movement from Western points which comes to Fort William by rail and is carried from Fort William to the Bay ports by water. In the result, it might be expected that the rates from the Bay ports would reflect to some degree the tapering which is an accepted principle with regard to long hauls (See 33 C.R.C. at p. 172). However, this does not in itself justify a non-compensatory rate.

There are the following factors to be considered in assessing the propriety of such rates:-

(1) The low rates to Saint John are necessary if Saint John is to be maintained as a port through which the export of this grain traffic can move in competition with the United States Atlantic ports. This has been looked upon as a matter of national importance and the policy of making low rates to the Maritime Atlantic ports has been recognized for many years (See 33 C.R.C. at p. 172).

(2) Apart altogether from the importance of keeping

the Maritime ports as the ports through which, during the winter months, the Eastbound export traffic and the Westbound import traffic could move, the movement of grain through Saint John, N.B. provides traffic for ships which would not otherwise call at Saint John but which might otherwise call at the United States Atlantic ports. In this event, the probability is that the Canadian Pacific would lose a very considerable amount not only of import traffic, but also export traffic, other than grain, if it were not able to provide outbound cargoes of grain.

(3) It is at least a probability that if the movement of traffic during the winter months were not maintained through the port of Saint John as well as the port of Halifax, there would be a decreasing movement through the ports of Montreal and Quebec during the summer months.

Canadian Pacific, apart from the foregoing, does not seek to justify the rates to Saint John on grain from the Bay ports for export.

During the Saint John shipping season 1948-49 from November to April inclusive, 4971 carloads of export grain were moved to Saint John from the Bay ports. Export traffic other than grain from the Bay ports during the same period through the port of Saint John amounted to 14,910 carloads. It thus appears that about 25% of the export movement through Saint John consisted of grain from the Bay ports. On the other hand, there were received through the port of Saint John during the same period 7,775 cars of import traffic. Thus the movement of Bay port grain through Saint John comprised 18% of the carload movements both export and import moving through the port of Saint John in that period.

Less than carload competitive rates:

In the case of less than carload competitive rates, car mile earnings cannot be calculated except on a statistical basis. In any case they are, as a whole, substantially below the system average because the average loading in less than carload movements is low. Ton mile earnings are, however, an important consideration in the case of less than carload rates.

Considering the relatively short period of time that has elapsed since the price ceiling restrictions of the Wartime Prices & Trade Board were removed in September, 1947; the fact the Board refused to permit increases in competitive rates pending their decision in the 21% Case; the large number of tariff items involved; and the great amount of detailed investigation necessary; it cannot be fairly stated that the railways have, in any way, been negligent or dilatory with respect to eliminating or increasing motor truck or water competitive rates after the competition had wholly, or in part, disappeared. In fact, it is quite apparent that the contrary is the case.

The Table which follows shows the tonnage, revenue, ton miles, average rate per ton and average rate per ton mile, of less than carload traffic compared with carload traffic, for the year 1948:

TABLE 1
System - Rail Lines Only

	<u>Less than carload traffic</u>	<u>Carload Traffic</u>	<u>Total</u>
Tons	1,595,480	58,441,353	60,036,833
Revenue	\$29,760,011	\$256,144,339	\$285,904,350
Tons one mile (thousands) x	680,897	x 24,537,503	25,218,400
Average rate per ton	\$ 18.65	\$ 4.38	\$ 4.76
Average rate per ton mile x	4.37¢	x 1.04¢	1.13

x - Estimated.

The figures shown above are actual, except that the figures of ton miles and the average rate per ton mile for L.C.L. and carload traffic were estimated, as no segregation of the totals in this respect are available in the Company's records.

The figures of ton miles for L.C.L. and carload traffic were estimated on the assumption that the ton miles in each case would have the same relationship as between carload and less than carload traffic as the tonnage: that is to say, that the average haul would be the same for carload as for less than carload traffic.

This Table shows that the average revenue per ton mile for less than carload traffic is more than four times the average revenue per ton mile for carload traffic. This is due to the much higher rates applying to less than carload traffic.

Table 2 following is a comparison of loaded car miles, revenue and average revenue per loaded car mile of less than carload traffic with carload traffic, for the year 1948:

TABLE 2
System - Rail Lines Only

		<u>Less than carload traffic</u>	<u>Carload traffic</u>	<u>Total</u>
Loaded car miles	x	138,867,827	x 678,001,744	816,869,571
Revenue	\$	29,760,011	\$256,144,339	\$285,904,350
Average revenue per loaded car mile	x	21.4¢	x 37.8¢	35.0¢

x - Estimated, on the assumption that the length of haul would be the same for carload as for less than carload traffic.

Table 2 shows that the average revenue per loaded car mile for L.C.L. traffic is 21.4¢ as compared with 37.8¢ for carload traffic. This is due to the fact that the average loading per car for less than carload traffic is much less than for carload traffic. For example, in the year 1948 the average loading of L.C.L. was

4.78 tons and that of carload traffic 35.97 tons per car. This calculation is based on the number of L.C.L. merchandise cars and carloads divided into the actual number of tons of L.C.L. and carload traffic handled.

The lower averages for less carload traffic than for carload traffic are due primarily to the light loading of so-called L.C.L. "way-freight" cars moving to and from the smaller stations. While such way-freight cars account for a substantial aggregate mileage, they handle a relatively small amount of the total of all less than carload freight, because the bulk of this traffic moves between the larger centres where the loading is substantially heavier with consequent higher earnings per car and per car mile.

The Tables at pp. 62-65 of the Appendix shows typical movements of L.C.L. merchandise cars from the larger cities to representative destinations, in the month of June, 1949. The length of haul, average weight per car and earnings per car and per car mile are shown. The earnings had of necessity to be estimated. The estimates are based on 2nd Class rates; less than carload "all-commodity" rates; or the Group 2 P. & D. rates where they are in effect. It is considered that 2nd Class and P. & D. Group 2 rates represent a fair average. Where pick-up and delivery service is authorized, the costs of such service at origin and destination have been deducted.

The results shown in the table do not reflect actual revenues from and to the specific points shown, inasmuch as the average weights per car include some "tranship" freight, and in addition, average rates had to be used because the actual revenue obtained on each individual shipment loaded in the car is not available.

On the "tranship" freight the full local rate from and to the points shown in the Table would not apply, but rather a division based on mileage for the distance shown in the Table

of the through rate from original shipping point to destination. Even allowing for this, however, it is considered that the earnings on the straight L.C.L. merchandise cars from and to the larger centres as outlined in the Table would still be compensatory, since a great majority of the movements yield car mile earnings in excess of the average car mile earnings for carload traffic.

In the case of heavy traffic in one direction necessitating an empty car movement in the opposite direction, it is customary to load the merchandise cars with less freight in the direction of light movement than in the direction of the heavy movement, rather than return more empty cars, as such practice facilitates the loading of the merchandise at lower cost. For example, the movement of merchandise from Eastern Canada to Western Canada during the heavy grain shipping season, takes account of the preponderance of loaded cars eastbound and empty cars westbound. Were it not for this fact, the movements shown in the Table in some cases might have been loaded even more heavily.

The Tables at pp. 66-71 of the Appendix show a statement of the loading weight of so-called "way-freight" cars from Montreal, Toronto, Winnipeg, Regina, Moose Jaw and Saskatoon, Calgary, and Vancouver to representative destinations.

While the average loading for the way-freight cars is substantially lower than the loading per car of straight merchandise cars or carload traffic and the earnings thereon may be considered as non-compensatory, the service these cars perform is of great importance to the communities they serve, particularly those located in areas where no other form of transportation is available.

It is impracticable to show the earnings per car and per car mile for the way-freight cars as the weights shown are the original loading weight of shipments to the destinations shown, as well as to intermediate points, and furthermore, such cars may pick up additional L.C.L. shipments at stations along the line for points beyond.

Pick-up and delivery rates apply only to less than carload freight and are designed to provide door to door service in order to meet truck competition. Such service is, however, confined to the corporate limits of the city or town of origin or destination at which contracts have been made with cartage agents.

In Ontario and Quebec pick-up and delivery rates are published between all stations in the area Windsor-Sault Ste. Marie, Ont. and east to and including Quebec and Megantic, Que., where cartage arrangements have been made. In this area point to point rates are published on various commodities in less than carloads in four columns, namely, Columns 1, 2, 3 and 4. These pick-up and delivery rates are not governed by the Canadian Freight Classification. The tariff contains a list of the commodities on which the rates in Columns 1, 2, 3 and 4 apply. These column rates were based on Schedule "A" first, second, third and fourth class rates except that for distances over 375 miles, arbitraries were added varying from 4¢ to 10¢ per 100 lbs. depending on the measure of the rate. These column rates were increased by 15% as a result of the increase in competitive rates in September 1948.

In the P. & D. tariff, in some instances, commodities were given one class lower than the Canadian Freight Classification rating and, in addition, the Classification packing requirements have generally been waived. This was found necessary as motor trucks were, in many cases, handling goods at rates lower than the railways class rates without the packing requirements.

"All-commodity" rates applying on less than carload freight, including pick-up and delivery service, for application during the entire year are published between Montreal and Toronto. The present rates are 84¢ per 100 lbs. on shipments weighing 5,000

or more, and 98¢ per 100 lbs. when the weight is less than 1,000 lbs., forwarded from one consignor to one consignee.

"All-commodity" rates applying on less than carload freight, including pick-up and delivery service, are also published between Toronto and Fenwick, Port Colborne and Welland, Ont. in connection with the T.H. & B. Ry. at 41¢ per 100 lbs. on shipments weighing 1,000 lbs. or more and 48¢ per 100 lbs. on shipments weighing less than 1,000 lbs. These rates were established to meet the competition of the Canadian National Steamships across Lake Ontario.

Within New Brunswick and Nova Scotia and within Western Canada, the pick-up and delivery service is performed at the usual less than carload rates.

In Western Canada there is also in effect a special tariff applicable between stations Murillo, Ont. west to Canmore, Alta. These are mileage rates for distances up to 400 miles on four groups of commodities in less than carloads, including pick-up and delivery service. Mileage class rates for Classes 1, 2, 3 and 4 up to 380 miles with a slight modification between 380 to 400 miles.

The tariffs which provide for pick-up and delivery service on less than carload traffic are restricted in their application so as not to apply on large and bulky articles such as freight in bulk, boats, household goods, livestock, explosives, etc., which are not susceptible to truck competition.

The following is a comparison of Canadian Pacific revenue derived from the handling of less than carload traffic with the actual expense incurred in performing pick-up and delivery service for the years 1940 and 1948:

Year	Less Than Carload Revenue	Pick Up and Delivery Expense	Percentage Relationship of Pick-Up and Delivery Expense to Total Less than Carload Revenue
1940	\$ 11,999,386.00	\$ 900,844.31	7.50%
1948	\$ 29,760,011.00	\$ 2,521,200.73	8.47%

Following this the railways undertook a very careful study of the transcontinental rates with the result that all less than carload commodity rates and a large number of carload commodity rates, both westbound and eastbound, have since been cancelled.

The remaining items in the transcontinental tariffs were carefully reviewed and have, in many cases, been further substantially increased, westbound, effective September 1st, 1949, and eastbound, effective October 1st, 1949. The railways in making these increases endeavoured to provide, generally, for the same basis of rates as in effect between New York, N.Y. and Seattle, Wash.

In the revised rates, effective September 1st, and October 1st, 1949, it was necessary, in some instances, to maintain rates which are lower than the New York-Seattle rates. This has only been done, however, where after careful investigation, the railways were satisfied that the application of rates equal to the New York-Seattle rates would result in loss of the traffic to water lines or to sources of supply outside of Canada such as from the United States and Europe.

It is quite evident that the railways have not allowed low competitive transcontinental rates to remain in effect after the competition or the threat of competition disappeared.

With the lifting of the price ceiling restrictions imposed by Wartime Prices & Trade Board Order No. 92, the railways, as soon as possible, made a complete study of the entire situation resulting in many cancellations and substantial increases in the rates.

Two tables appear at pp. 81-82 of the Appendix.

The first of these shows the mileage, rates, loading, car mile and ton mile earnings on various commodities moving from Vancouver and other British Columbia points to Eastern Canada. This table shows that the car mile earnings on the commodities listed vary from a low of 26.6¢ per car mile on cement and oil from Vancouver to

OUTLINE SUBMISSION

INTERNATIONAL RATES

"52. The regulatory powers of the Board in connection with international rates, insofar as the portion of the haul within Canada is concerned, are identical with its powers for regulating traffic between points in Canada. Likewise, on international traffic, the Interstate Commerce Commission has complete jurisdiction over the portion of the haul within the United States.

53. Canadian Pacific submits that the existing regulation of international rates is adequate and no legislative action is required."

FURTHER SUBMISSIONS

Canadian Pacific is at all times prepared to negotiate with its United States connections for the establishment of through international rates where necessary to permit the products of Canada to reach the markets of the United States.

The position of the United States railroads is the same in that they are continually negotiating with the Canadian railways for the establishment of through rates in order to permit the products of the United States to reach the markets of Canada.

In establishing joint international rates, due regard must be given to the level of rates and local conditions applying within each country.

Any suggestion which would in any way interfere with the freedom of both the United States and Canadian carriers in these negotiations would, in the opinion of Canadian Pacific, be a backward step and would greatly hinder, rather than help, industry in Canada in obtaining fair and reasonable rates to permit its products to reach United States markets.

Through international class rates are in effect between Eastern Canada and Official Classification Territory in the United States (east of the Mississippi and north of the Ohio Rivers to the Atlantic seaboard). No through class rates are in effect

Western Canada based on a combination of rates to and from the Boundary gateways with the through published rates to points in Western United States of similar distances. It will be noted that the combination class rates to Regina and Calgary are lower than the through one factor rates to the United States destinations of similar distances with the exception of the 6th Class rate to Regina.

The Appendix, at p. 86 shows a comparison of through international class rates from Chicago and St. Louis to destinations in Eastern Canada with the rates to United States destinations of similar distances. It will be noted that the class rates to the destinations in Eastern Canada, in all cases, are higher than the rates to the United States destinations of similar distances. It will be noted that the class rates to the destinations in Eastern Canada, in all cases, are higher than the rates to the United States destinations of similar distances. It will be noted that the class rates to the destinations in Eastern Canada, in all cases, are higher than the rates to the United States destinations of similar distances.

The Appendix at pp. 87-8 shows a comparison of the standard mileage class rates applicable in Western Canada with the United States Western Trunk Line Zones 1, 2, 3 and 4 class rates for representative distances from 100 miles to 1000 miles.

This Table shows that the standard mileage rates applicable in Western Canada are substantially lower than the rates applicable within the contiguous United States territory.

As already outlined herein, the through international rates are made within relationship to the rates applicable within the United States. The through international rates have, therefore, always been subject to the same general increase as made to the United States rates.

In general increases in freight rates, the United States railroads also petition the Board of Transport Commissioners for

authority to increase the international rates, pointing out that the conditions which call for and necessitate an advance in rates within the United States apply equally to international rates.

The same increases in international rates as made within the United States are necessary to permit the continued orderly movement of international traffic.

The Board of Transport Commissioners for Canada, in their orders granting authority to increase the international rates to the same extent as authorized by the Interstate Commerce Commission within the United States, have pointed out that it is deemed by the Board to be expedient in the public interest that the continuity of joint through rates from points in the United States to points in Canada, and vice versa, and the maintenance of the parity of port relationships, should be preserved.

Without uniformity of rate increases, the port relationships as between Canadian and United States Atlantic ports would be disrupted.

If the international rates between official territory and United States ports were not increased to the same extent as rates within official territory, the rates between United States points and the border points in the United States would be higher than the through rates to or from points over the border in Canada.

If through international rates were not increased to the same extent as within the United States with authority of the Interstate Commerce Commission and Board of Transport Commissioners for Canada, the United States railroads would find means by which the through rates could be so increased

comparison of their results one with another and with those of United States roads, nevertheless the extent of comparability between the two major Canadian roads and between Canadian and United States roads is limited.

The revenue accounts of the two large Canadian systems differ in the treatment of two sources of revenue - express and communications. In the case of the Canadian Pacific, express service is performed by the wholly-owned subsidiary, Canadian Pacific Express Company, which operates under contract over the parent Company's system. The Express Company pays to the railway the net earnings for the express service provided by the railway. The Company's railway operating revenues include, as express revenue, the net earnings so paid over and no charges pertaining to the cost of the Express Company's operations appear in the railway operating expense accounts. Express Company income from non-rail operations is paid to the parent Company and is included in the latter's "Other Income". In the United States similar arrangements for the performance of express operations are in effect between the railroads in that country and the jointly-owned Railway Express Agency. On the other hand, the Canadian National operates its express service as a department of the railway. The gross earnings from express operations are included in railway operating revenue accounts and the expense of conducting such operations is included in the railway operating expense accounts.

Communication services, such as commercial telegraphs and leased wire service, are operated by the Canadian Pacific through a department of the Company. The net results are credited to "Other Income". Railway service messages - telegraph and long-distance telephone - handled over the facilities of the Communications Department are charged at cost to the railway and distributed to appropriate operating expense accounts. In the United States the majority of railroads have similar arrangements

The classes of Depreciable Road Property include tunnels and subways, bridges, stations, roadway buildings, signals and interlockers, shops and engine houses, shop and power plant machinery, etc.

The unit of measure adopted for the allocation of the original cost of these properties over their service lives was the gross ton mile, which, as in the selection of locomotive and car miles as the unit of measure for the allocation of the original cost of these properties over their service lives, was found particularly appropriate and satisfactory in the case of all the properties of this class, and in the case of the other properties of the same class.

Depreciation of Canadian Pacific Inland Steamships and Work Equipment is accounted for on the "straight line" rather than the "user" method of allocation. There are no appropriate units of use available relating to these classes of property, which, in any event, are not subject, as a rule, to violent fluctuations in usage.

OUTLINE SUBMISSION

"59. The so-called non-depreciable road properties include, in addition to land and grading, the track structure, that is to say, ties, rails, ballast, and other track material. When depreciation accounting was established for road properties by the I.C.C. the track structure was excluded and the railroads have continued to charge the current cost of renewals to operating expenses."

FURTHER SUBMISSIONS

Recently the Interstate Commerce Commission and the railroads have commenced studying the matter of applying depreciation accounting to track structure and the Commission's Bureau of Accounts has proposed that consideration be given to the "production" (or "user") method of accruing such depreciation.

OUTLINE SUBMISSION

"60. One of the principal objects of a depreciation system is to charge currently against income an appropriate proportion of the cost of property and equipment used in producing transportation service. The user method, by directly relating the depreciation charge to the use made of the property and equipment, achieves this object. The resulting net income in periods both of high and of low traffic volume is in the opinion of Canadian Pacific more reasonably stated than if the straight line method were used."

FURTHER SUBMISSIONS

Although the majority decision of the Board in the recent Judgment in the 20% Case and on the review of the 21% Case, would seem to have resulted in a decision in favour of the straight line method, a reading of the Judgment suggests that this view was adopted by the majority judgment for the purpose only of revising the Judgment in the 21% Case. The subsequent reference in the majority judgment to the provisions of Paragraph 2(d) of Order-in-Council P.C. 6033 suggests that in the Board's view, final determination of this question may well await the recommendations of your Commission. This view would seem to mean that consideration of the method of depreciation to be adopted for uniformity of accounts, is a matter for your Commission to determine under Order-in-Council P.C. 6033. That is to say, the view appears to be that it is for your Commission to recommend whether, for example, the user method or the straight line method should be adopted. It is submitted, however, that this view does not require your Commission to give consideration to the rates which should be applied under either method of depreciation. In the light of the above view, the following further submissions are now put to you.

In the 20% Freight Rates Case, counsel for the Canadian Pacific analyzed the evidence in respect of the "user" basis as presented not only in the 20% Case but in the preceding 21% Case as well (see Volume 816, pages 4038-61).

Accounting experts called as witnesses by Canadian Pacific in the two rate cases gave strong support to the Company's depreciation policies and practices. Mr. George O. May, acknowledged dean of the accounting profession in the United States today and former senior partner of the American firm of Price, Waterhouse & Company, gave evidence that in his opinion the user method "is theoretically preferable and practically better" (Transcript 21% Case, page 15499), that he regarded it as "an advance on previous practice" (page 15505), and described

the user method as a "superior method" (page 15524).

Mr. J. Grant Glassco, already mentioned as having recorded in the 21% Case the definition of depreciation adopted by the American Institute of Accountants, gave evidence in that case that the user basis is an "ideal method" (page 15304).

Mr. J. C. Thompson, senior partner in Canada of Peat, Marwick, Mitchell & Company, and widely recognized in Canada as an expert in accounting matters, in his evidence said that "the user basis is particularly applicable to a railway" (21% Case, page 14345); and "The user basis more correctly reflects current wastage" (21% Case, pages 14346 & 14349).

Mr. K. W. Dalglish, senior partner of the firm of Deloitte, Plender, Haskins & Sells, one-time president of the Dominion Association of Chartered Accountants, former member of the Board of Referees under the Excess Profits Tax Act, gave evidence in the 20% Case that "in my view the user basis of depreciation is eminently suitable for railroad accounting because railroads experience violent fluctuations in operations" (page 359) and "it seems to me that the user basis. . . is to the advantage of the users of the railroads as they are only called upon to pay amounts for depreciation relative to the service given them" (page 361).

Mr. Paul Grady, partner in the American firm of Price, Waterhouse & Company, experienced utility accountant and chairman in 1939 and 1940 of the Special Committee on Public Utility Accounting of the American Institute of Accountants, appearing in the 20% Case said that he believed the user method provided "a more equitable charge against periodic income" (page 2708).

Mr. Lionel Kent, Chartered Accountant, who gave evidence for British Columbia, in cross-examination agreed with Mr. May's statement that the user method "is theoretically preferable and practically wiser" (20% Case, page 3286). He also agreed

with Mr. Thompson's statement that "the user basis more correctly reflects annual wastage" (page 3284). Mr. Kent also agreed (page 3285) that the user method is flexible, although he would not agree that the straight line method is rigid. Mr. Walter MacDonald, for the Province of Manitoba, had agreed in the 21% Case (page 12624) that the straight line method is rigid; the user basis flexible.

Canadian Pacific submits that the evidence in the two rate cases strongly supports the "user" basis and that no effective attack was made upon it.

In application of the "user" method of allocating depreciation, railways have a distinct natural advantage over most utilities in that they have fairly homogeneous statistical units - in gross ton miles, locomotive miles and car miles - with which to measure production.

Canadian Pacific submits that the "user" depreciation method has substantial advantages not only to the railway company but also to the users of railway service and to the railway's employees. To the man who "pays the freight" the "user" basis ensures that the element of depreciation cost remains proportionately the same regardless of the business cycle. To the railway workers it tends towards stabilization of employment, as opposed, for instance, to the "straight-line" method which requires the same dollar charge in a year of low business volume as in a year of high business volume and thus inclines to curtail the amount of maintenance work which might otherwise be done during depressed traffic years when prices are relatively low. It is difficult to restore a work deficiency of this nature in a period of high business volume because of the shortages in materials and the price rises which usually accompany such a period.

In the opinion of the Canadian Pacific, any statutory direction prescribing a uniform system of accounts should be exceedingly general in character in order to avoid hampering and inhibiting the Board in the exercise of its administrative

functions. Over the years there has been a constantly expanding development of machinery and equipment in the railway industry to the railways to avail themselves currently of such developments under the supervision of the Board.

In concluding this part of its submission, it is essential that attention should be directed to a problem, while not necessarily related to depreciation accruals, nevertheless results from the application of orthodox accounting as presently practised. Orthodox accounting requires that original cost form the base of depreciation and in periods of stable prices the accruals on this basis would naturally provide for the replacement of assets. The drastic elevation of price levels, however, means that depreciation accruals based on original cost fall far short of meeting replacement requirements. Canadian Pacific, for example, is currently charging depreciation based on the original cost of locomotives purchased for \$20,000 or \$30,000 which cannot be replaced for much less than \$150,000 at today's prices. Large increases have also taken place in the prices of other items of the Company's assets which now and in the future require to be replaced.

The financial aspect of this situation far overshadows the importance of any differences in opinion among accountants in regard to questions affecting depreciation calculations. While there is diversity of opinion as to the policies and practices which should be adopted to cope with rising investment costs, there is general agreement by businessmen, economists, accountants and others as to its effect. The dominant considerations of the future must inevitably lie in the direction of ways and means of securing adequate funds for replacement of facilities. The situation is far more serious for public utilities than for most other businesses because utilities have relatively large investment in plant in proportion to income and because of the low rate of capital turnover inherent in their operations.

OUTLINE SUBMISSION

"63. Although Canadian railways generally speaking, follow the Interstate Commerce Commission Classification of Accounts, they do not follow as closely statistical practices laid down by that Commission for the United States roads. For example, Canadian railways do not maintain records providing a ready separation of expenses as between passenger and freight operations as required by the Interstate Commerce Commission. The Canadian Pacific, despite suggestions which have been made to the Board of Transport Commissioners, does not believe that any useful purpose would be served by adopting the practice of the Interstate Commerce Commission in this respect. The Company has no option but to carry on a passenger business and submits that just as a railway company must carry certain classes of traffic which can contribute much less than other classes to the overall cost of transportation, so the full cost of providing passenger services cannot be charged against passenger traffic under all circumstances.

64. The system of accounts in use by the railways is not designed to supply data on the cost of each operation but to provide management with expense figures most useful for control purposes. These figures may be used, in connection with related statistics, to find in specific situations the approximate cost of providing a particular service. Individual studies which are less costly because they are infrequently required, are a more useful method of developing railway costs than the establishment of routine cost accounting procedure. The Interstate Commerce Commission finds it necessary to employ such studies despite the elaborate nature of its routine accounting and statistical reports."

FURTHER SUBMISSIONS

The Interstate Commerce Commission has prescribed "Rules Governing the Separation of Operating Expenses, Railway Taxes, Equipment Rents and Joint Facility Rents, between Freight Service and Passenger Service on Large Steam Railways", (Revised Issue, effective January 1, 1936). Under these rules, the railroads in the United States are required, commencing at the most elemental level of the accounting organization, to assign to freight and passenger services all expenses directly or naturally assignable. Expenses common to both services are distributed, commencing at the primary accounting level, on the basis of directly assigned expenses and various other bases involving the use of statistical factors and relationships between accounts. The carrying out of this procedure has meant much clerical work and expense for United States roads.

Due to greater traffic density in the United States,

exclusive freight or passenger service facilities are more prevalent than on railways in Canada and such specialization lends itself to direct segregation of expenses. In Canada most of the trackage, terminals and other facilities are in joint use by both passenger and freight services and there is not the same degree of natural segregation. The application of this method by Canadian railways would therefore involve much more extensive use of arbitrary distributions than is necessary for United States roads.

In the era when passenger traffic was the exclusive preserve of the railways, knowledge of the cost of this service was of value and of significance in rate cases. Since then air and highway transportation have grown to such an extent that it is out of the question to establish passenger rates in relation to cost of service and a separation of expenses between freight and passenger has lost much of its former significance. From management's point of view, a passenger service "income account", in effect, would be of no more than academic interest in face of the hard fact that the railways are under obligation to continue supplying passenger service.

In the recent freight rate cases, stress was laid by the Respondents from time to time on the need for complete segregation of railway operating results between freight and passenger. The railways submitted that such data were not relevant to the main issue (21 % Case, pages 1051, 2671 and 2826). In the course of the 21% Case, the Canadian National and Canadian Pacific filed special studies of their freight and passenger results for the years 1923, 1926, 1936-39 and 1944-46 (see Exhibits 28, 29, 30 and 138). In these studies the statistical allocations, as apart from the items which are directly allocable, were necessarily predominant.

Experience has shown that little or no practical use can be made by management of cost figures compiled by a general overall

study. When it is necessary to know the approximate cost of providing a specific service, this can be determined on the basis of existing details of expenses and related statistics. Canadian Pacific's internal accounting provides currently separate expense figures for freight and passenger service for such important items as fuel expense and train and engine crew wages, in addition to the freight or passenger items which the classification of accounts naturally provides. Approximations of cost on the basis of such readily available material have been found to meet adequately all the needs of management for control data.

The imposition on Canadian railways of an overall cost accounting procedure more comprehensive and elaborate than that presently in practice would add to the overall cost of transportation and, consequently, to the rates paid by the users of railway services. Canadian Pacific submits that the accounting detail presently available is adequate for all practical purposes; that there is no real need for imposing on Canadian railways an elaborate system of detailed freight and passenger cost accounting. Accordingly, it is submitted that your Commission should make no recommendation of such a nature.

OUTLINE SUBMISSION

"65. With regard to the segregation of assets between rail and non-rail operations, Canadian Pacific keeps its accounts in such a way as to enable an adequate segregation to be made except in the case of working capital, which must always be a matter of judgment. No legislation is required to enable a complete segregation to be made and Canadian Pacific supplied such material recently to the Board of Transport Commissioners."

FURTHER SUBMISSIONS

Canadian Pacific accounting follows the pattern prescribed by the Interstate Commerce Commission for railroads in the United States and its railway investment and operating results are distinguishable from the corporate investment and results with only certain minor exceptions. In support of this assertion

attention is drawn to the Annual Report of Canadian Pacific to the Board of Transport Commissioners and the Dominion Bureau of Statistics for the year ended December 31, 1948.

Dealing first with the assets of the Company, there is no difficulty, for example, in finding the amount of the Railway Property Investment in the General Balance Sheet (Schedule 4A and footnote 2 in the Annual Report for 1948 of Canadian Pacific to the Board and Bureau of Statistics). Clearly segregated on the "Assets" side of the Balance Sheet are the items of railway, rolling stock and inland steamship properties, improvements on leased railway property and the stocks and bonds of leased railway companies. These comprise the investment, as recorded in the books of the Company, in owned and leased lines of the railway enterprise. In this connection it is important to understand that the Road Property Investment is recorded at much less than actual cost owing to the feature of "renewal accounting" which the Company followed in regard to road property replacements for so many years. Under renewal accounting, when a unit of property is replaced the investment account is charged with the amount, if any, by which the total cost exceeds the cost to replace in kind, but it is not charged with the amount by which the cost to replace in kind might exceed the cost of the original unit. To the extent of replacements in kind, therefore, the investment account does not reflect changes in cost brought about by changes in price level and there is no way of ascertaining at this time the extent to which the investment account has been so understated short of a physical inventory of the entire property.

Also on the "Assets" side of the Balance Sheet, and elaborated in note 1 thereto, is the sum of the donations and grants which were used in the building of the railway, comprised mainly of those received under the terms of the original contract dated October 21, 1880.

With regard to the stocks and bonds of leased lines which are held by the public, but which must be taken into account

in order to arrive at the total "investment in property used in transportation service", the value of such securities is shown in note 2 of the Balance Sheet.

In the interests of economy and efficiency, the Company's treasury and much of the materials and supplies are common to both rail and non-rail operations and thus there is no readily discernible segregation between rail and non-rail of the Working Capital of the Company. The principal items of Working Capital, which represents only a relatively small part of the total investment in any event, are the Cash and Materials and Supplies but these are subject to reasonable apportionment through special study on the basis of respective requirements. Such an apportionment was recently developed by the financial and supply officers of the Company in the 20% Freight Rate Case and was accepted by the Board in its recent judgment.

The funded debt and capital stock liabilities of the Company, as set out on Schedule 4B in the annual report to the Board and to the Bureau of Statistics, are not segregated between the railway enterprise and the non-railway operations, and such a segregation is not, of course, practical or even feasible except on a purely arbitrary basis.

Proceeds from the issuance of the capital stock and other securities (apart from Equipment Obligations) have been merged in a common treasury along with all other monies which the Company constantly receives from its many diversified operations. The Company supplied a balance sheet and profit and loss account to the Board in the 20% Freight Rate Case (Exhibit (49)-49) showing an allocation of capital and profit and loss between railway and non-railway properties.

In summary, the Canadian Pacific investment in railway property is clearly segregated from non-railway investment on the Balance Sheet and there is supplied to the Board and the Bureau of Statistics the figure of "Investment in Property

used in Transportation Service", which is the relevant base for testing railway results. While it is true that the capital liabilities of the Company cannot feasibly be segregated as between rail and non-rail operations, no difficulty is presented because the satisfactory way of measuring permissible earning power is by fixing a fair rate of return to be earned on the railway property investment.

OUTLINE SUBMISSION

"66. The Company's income account provides in the first instance the net amount of earnings produced by the investment in railway transportation property and also an overall figure of income earned from the investment in non-rail assets. Some minor items of overhead costs, such as supervision expenses and some items of income, such as bank interest, might be allocated somewhat differently but such differences are not likely to be important."

FURTHER SUBMISSIONS

Details of the results of Canadian Pacific properties are set out in the Income Account (Schedule 14) of the annual report to the Board and to the Bureau of Statistics in conformity with the nomenclature of the standard classification and thus the results of the railway enterprise are clearly discernible from the results of other operations of the Company.

The details of railway operating revenues and expenses, as reported on Schedule 14, are set out under standard primary account headings in Schedules 16 and 17. There are some minor items of income and expense which are common to both rail and non-rail operations and the proportions of these which go into the rail primary accounts are established by Canadian Pacific with as much refinement as is necessary. Additional refinement could only be undertaken at unjustified expense and, due to the relationship between the railway and its non-rail enterprises, there is little doubt that the result would not be materially different. If refinement were extended to the point where, for example, a proportion of bank interest was credited to railway earnings, it would be appropriate, on the other hand, to charge the railway for the use of money

provided by "Other Income" from time to time. In this case the result would be an increase in the charges against railway accounts.

OUTLINE SUBMISSION

"67. Canadian Pacific submits that accounting methods and statistical procedure are not matters which lend themselves to statutory treatment but rather should be left to administrative regulation by the Board of Transport Commissioners in order that necessary flexibility may be provided."

FURTHER SUBMISSIONS

Canadian Pacific submits that accounting matters do not lend themselves to the rigidity implicit in statutory direction but are more properly a subject of administrative regulation. Canadian Pacific reiterates that its present arrangement of accounts as between railway and non-railway operations produces a fair picture of railway results. The Company has no objection to a working procedure with the Board similar to that followed by the Interstate Commerce Commission and United States railroads, under which accounting matters are continuously reviewed by the Commission's staff, in co-operation with railroad accounting officers.

The preparation of a classification of accounts for Canadian railways was the subject of a study undertaken by a committee set up in 1937 by the then Minister of Transport under the chairmanship of an official of the Dominion Bureau of Statistics, and consisting of representatives of the Department of Transport, the two major Canadian railways and the Railway Association of Canada. Considerable progress was made, but agreement had yet to be reached on several important features when the outbreak of war necessitated abandonment of the work.

The Canadian Pacific, while always willing to co-operate in any study undertaken in a search for a workable formula capable of effecting an improvement over the present procedure, is of the opinion that it would not be prudent nor advisable to attempt to set, by legislation, the exact pattern which uniformity should

take. Administrative regulation by the Board of Transport Commissioners is sufficient to provide efficient control, and, at the same time, the flexibility essential to meet changing conditions and to keep pace with technological progress. The Canadian Pacific respectfully urges that your Commission make no recommendation which would tend to limit the Board's exercise of judgment in this respect.

OUTLINE SUBMISSION

"Clause 2(e) of the Order-in-Council reads:-

'2(e) Review and report on the results achieved under the Canadian National-Canadian Pacific Act, 1933, and amendments thereto, making such recommendations as the present situation warrants.'

68. The cooperative measures contemplated by the Act were suggested as a partial means of meeting a condition which developed during the great depression of the early 1930's, when the density of traffic on both railways reached so low a point as to make it impossible to conduct either of them on a profitable basis.

69. Prior to 1930 many joint arrangements, some of long standing, were in effect among Canadian railways. Under the impetus of this Act further studies were undertaken by the two major railways looking to cooperative savings. Various arrangements were formulated and put into effect embracing joint trackage agreements, joint station and terminal agreements; pooling of passenger train services and other cooperative measures such as joint freight handling and joint advertising."

FURTHER SUBMISSIONS

In reviewing the results achieved under the Canadian National-Canadian Pacific Act 1933, and subsequent amendments thereto, an appreciation of the circumstances existing prior to and surrounding the passage of the Act is desirable.

For many years prior to the enactment of the above statute the Canadian Pacific had joint arrangements of various kinds with other railways. These arrangements may be classified under two headings:

(1) Joint facility agreements, whereby one company is granted the right to joint use of the facilities of another company. An example of this type of arrangement is the Toronto-Hamilton joint section involving the use by the Canadian Pacific of the Canadian National line between these points.

(2) Joint ownership of facilities whereby two or more companies construct or acquire facilities for joint use. An example of this type of arrangement is The Toronto Terminals Railway Co., in which the Canadian Pacific and Canadian National each own one-half interest.

At the present time Canadian Pacific is party to some 83 joint facility agreements involving facilities which it is estimated have a probable capital value of approximately \$115,000,000 and participates in joint ownership of two jointly used facilities, involving a further probable capital value of approximately \$27,000,000. These co-operative enterprises were entered into voluntarily by the companies concerned, with the approval of the Board where necessary, for the purpose of avoiding duplication of facilities and of effecting economies in maintenance and operation.

With the onset of the depression in 1930, traffic on both major railways declined sharply to a point where it became impossible to operate either of them on a profitable basis. In 1933, following the report of the Duff Commission, Parliament enacted the Canadian National-Canadian Pacific Act which directed the two railways to endeavour to agree upon co-operative measures for the purpose of effecting economies. In compliance with the terms of the Act many studies were undertaken and various co-operative arrangements formulated and put into effect embracing joint trackage agreements, joint station and terminal agreements, pooling of competitive passenger train services and other measures such as joint freight handling and joint advertising. The

practice was that the net savings were shared equally by the two Companies.

OUTLINE SUBMISSION

"70. The combined savings realized from these arrangements formulated under the A.C.I. have exceeded one million dollars a year."

FURTHER SUBMISSIONS

The Joint Co-operative Committee, set up by the two companies, have made 17 studies which have resulted in co-operative action producing an estimated annual joint economy of \$1,189,240. Particulars of these projects are shown below, and the figures given in each case are the estimated savings at the time the co-operative projects were effected:-

<u>Passenger Train Pooling</u>		<u>Estimated Annual Joint Economy</u>	
Montreal-Toronto, Toronto-Ottawa, Limited Pool effective April 2, 1933		495,000	
Montreal-Toronto, Toront-Ottawa, Montreal-Quebec extended pool effective March 11, 1934		<u>477,000</u>	972,000
<u>Joint Freight & Passenger Facilities</u>			
Saint John, N.B.	Consolidation of Car Cleaning & Repair Staffs under C.N. supervision, effective December 1, 1933	10,163	
Fredericton, N.B.	C.P. Freight Office and Shed & C.N. Passenger Station closed and joint use of remaining facilities, effective March 1, 1934	8,895	
Quebec, P.Q.	Consolidation of Car Cleaning Staffs under C.P. supervision, effective June 16, 1933	17,736	
Gladstone, Man.	Joint use of C.N. Station, effective July 3, 1933	<u>2,800</u>	39,594
<u>Joint Switching</u>			
Portage la Prairie, Man.	Each Company performs joint yard and industrial switching in alternate months, effective November 1, 1933	<u>7,500</u>	7,500

Handling of Freight by One Company for the Other	Estimated Annual	Joint Economy
Fredericton, N.B. - Vanceboro, Maine, C.N. traffic hauled by C.P., effective December 1, 1933	9,000	
Calgary-Edmonton, Alta.-Kamloops, B.C., C.N. grain traffic originating in Calgary district hauled to Kamloops by C.P., and C.P. grain traffic originating in Edmonton district hauled to Kamloops by C.N., effective November 13, 1933	<u>60,000</u>	69,000

Change in Interchange Location

Freight traffic formerly interchanged at Lennoxville now interchanged at Lower Sherbrooke, effective January 1, 1934	<u>4,416</u>	4,416
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Line Abandonments with Joint Use of Remaining Line

Cyr-Edmundston, N.B., C.P. abandoned 27.6 miles of line and use C.N. line between these points, effective July 1, 1936	30,000	
Iberville-Farnham, P.Q., C.N. abandoned 10.9 miles of line and use C.P. line between these points, effective April 26, 1936	12,347	
Red Deer Jct.-Red Deer, Alta., C.N. abandoned 4.9 miles of line and use C.P. line between these points, effective March 27, 1941	2,560	
Alix-Nevis, Alta., C.N. abandoned 9.5 miles of line and use C.P. line between these points, effective date October 18, 1948	6,135	
Trelle Jct.-Morinville, Alta., C.N. abandoned 12.2 miles of line and use N.A.R. line between these points, effective date September 1, 1947	<u>8,688</u>	59,730

Line Abandonment with Abandonment of Territory

St.Canut-Cushing Jct., P.Q., C.N. abandoned 24.6 miles of line and discontinued business in the territory, effective August 1, 1940	24,000	
Linwood-Listowel, Ont., C.P. abandoned 16.5 miles of line and discontinued business in the territory, effective May 14, 1939	<u>13,000</u>	<u>37,000</u>

Estimated Annual Joint Economy from all Joint Co-operative Committee Projects in Effect as of January 1, 1949 \$1,189,200

Miles of line abandoned - C.N. 62.1; C.P. 44.1 - Total 106.2.

Fifteen studies indicating a further estimated annual joint economy of \$774,525 have also been made. These projects are as follows:-

Line Abandonment Projects approved by Board of Transport Commissioners but not effective.

	Estimated Annual Joint Economy	
Middleton-Bridgetown, N.S., C.N. abandon 13.2 miles of line and withdraw from territory	16,800	
Langdon-Beiseker, Alta., C.N. abandon 10 miles of line. C.P. abandon 22.6 miles of line. Each Company use remaining lines in territory jointly	30,500	
Forth-Ullin, Alta., C.P. abandon 64.7 miles of line and withdraw from territory. C.N. abandon 6.5 miles and lease 7.0 miles of C.P. abandoned line	<u>58,000</u>	105,300

Line Abandonment Projects considered by Board of Transport Commissioners but no order issued.

Dranoel-Medonte, Lindsay-Bobcaygeon, Ont., C.P. abandon 90.3 miles of line and withdraw from territory. C.N. lease 16.2 miles of abandoned line and agree that C.P. may have through running rights on C.N. line between Medonte and Peterboro when certain specific future conditions obtained	<u>55,700</u>	55,700
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Line Abandonment Projects recommended by Joint Co-Operative Committee but disallowed by the Board of Transport Commissioners.

Arnprior-Eganville, Ont., C.N. abandon 37.9 miles of line and withdraw from the territory	104,000	
Cataract-Fergus, Ont., C.P. abandon 24.7 miles of line and withdraw from territory	22,724	
MacGregor-Varcoe, Man., C.P. abandon 54.4 miles of line and withdraw from territory	45,000	
Louise-Deloraine, Man., C.N. abandon 56.3 miles of line and withdraw from territory	30,000	
Portage la Prairie-Gladstone, Man., C.N. abandon 36.4 miles of line. Each Company use remaining line in territory jointly	34,500	

		Estimated Annual Joint Econo	
Hamiota-Miniota, Man., C.P. abandon 19.8 miles of line and withdraw from territory		15,000	
Hallboro-Beulah, Man., C.N. abandon 75.2 miles of line and withdraw from territory		65,000	
Reston-Wolseley, Sask., C.P. abandon 122.4 miles of line and withdraw from territory		104,550	
Carbondale-Egremont, Alta., N.A.R. abandon 29.8 miles of line. C.N. and N.A.R. use remaining line in territory jointly		<u>14,421</u>	435,195
<u>Projects Recommended but not proceeded with.</u>			
Joint Switching: Mimico-Swansea, North Toronto- Leaside Areas		16,430	
Bala-Park-Wanup, Ont., C.N. abandon 141.2 miles of line. Each Company use remaining line in territory jointly		<u>161,900</u>	<u>178,330</u>
	TOTAL	-	\$774,525

The two undernoted projects for line abandonment, which were investigated in the first instance as co-operative projects, were later proceeded with as exclusive projects, that is to say, the abandoning Company decided to proceed independently and to give up its operation without sharing the savings or being compensated by the other for loss of traffic:

Ste. Therese-St. Eustache, P.Q., C.P. abandon 5.7 miles of line and withdraw from territory.

Joliette-Montfort Jct. and Fresniere-Shawbridge, P.Q. C.N. abandon 44.3 miles of line and each company use remaining line in territory jointly.

The following project, investigated and recommended, was subsequently found to be inadvisable on account of increasing industrial development in the territory:

Birds Hill-East Selkirk, Man. C.N. abandon 15.3 miles of line. Each Company use remaining line in territory jointly.

Projects found to be Uneconomical

Scotts Jct.-North to the River, P.Q.	Abandon either C.N.R. or Quebec Central Railway line and both use remaining line jointly.
Lancraie-Joliette, or Paradis- Joliette, P.Q.	Abandon 6.3 miles of C.P.R. line or 10.6 miles of C.N. line, both Companies using the remaining line jointly.
Belair-Lachevro- tiere, P.Q.	Alternative C.N.R. or C.P.R. line aban- donments with both Companies using remaining line jointly.
Federal-Smiths Falls, Ont.	Abandon 33.8 miles of C.N.R. line and both companies use C.P.R. line jointly.
Smiths Falls- Yarker, Ont.	Abandon 51.3 miles of C.N.R. line and use C.P.R. line jointly.
Glen Tay-Shannon- ville, Ont.	Abandon 69 miles of C.P. line with joint use of 84 miles of C.N.R. line
Ottawa-Pembroke, Ont.	Abandon either C.N.R. or C.P.R. line with both Companies using the remaining line.
Ottawa West- Carleton Place, Ont.	Abandon 24 miles of C.P.R. line and both Companies use C.N.R. line jointly.
West Tower-Deer, Man.	Abandon 23.9 miles of C.N.R. line and both Companies use C.P.R. line jointly.
Rossburn Jct.- Orrville, Man.	Abandon 9.2 miles of C.N.R. line and both Companies use C.P.R. line jointly.
Estevan-Bienfait, Sask.	Abandon 6 miles of either C.N.R. or C.P.R. line.
Regina-Moose Jaw, Sask.	Abandon 40.0 miles of C.N.R. line, both Companies using C.P.R. line jointly.
Young-Colonsay, Sask.	Abandon either C.N.R. or C.P.R. line
Saint John, N.B.	Joint yard switching.
Toronto, Ont.	Joint switching, Union Station & Coach Yard.
Chatham, Ont.	Joint switching, Sugar Co. premises.
MacTier & South Parry, Ont.	Consolidation of C.P.R. locomotive and ter- minal facilities with those of C.N.R. at South Parry or vice versa.
Parry Sound, Ont.	Joint yard switching.
Estevan, Sask.	Joint yard and industrial switching.
Regina, Sask.	Joint industrial switching.
Saskatoon, Sask.	Joint industrial switching.

Calgary, Alta.	Joint yard switching.
Kelowna, B.C.	Joint yard switching.
Halifax, N.S., Saint John, N.B., and other points.	Establishment of joint ticket offices.
Montreal, P.Q. - Boston, Mass.	Extension of passenger train pool services to include Montreal-Boston trains.
Extension of passenger train pool to West of Toronto, Montreal-Winnipeg, Man., and Toronto- Winnipeg and West.	
Pembroke-North Bay, Ont.	All C.P.R. through traffic over C.N.R. line.
Kamloops- Vancouver, B.C.	Hauling C.P.R. through traffic over C.N.R. line.

Projects on which study was interrupted
owing to war activities.

Between Competi- tive Points	Nation-wide pool competitive passenger train services.
Woodstock-Windsor, Ont. territory	Abandonment of competitive lines.
Nipigon-Current Jct., Ont.	Abandon C.P.R. line and running rights over C.N.R. line.
Fort William- James, Ont.	Abandon C.P.R. line and running rights over C.N.R. line.
Winnipeg-Morris, Man.	Abandon either C.N.R. or C.P.R. line and joint use of other line.
Brandon-Maon, Man.	Abandon C.N.R. line and joint use of C.P.R. line.
Saskatoon-Unity, Sask.	Abandon functionally duplicate line.
Bruderheim- Edmonton, Alta.	Abandon functionally duplicate line.
Fort William & Port Arthur	Joint operation of Lake Head Terminals.
Saskatoon, Sask.	Union Passenger Terminal.
Calgary, Alta.	Union Passenger Terminal.
Edmonton, Alta.	Union Passenger Terminal.
Edmonton & Calgary to Vancouver, B.C.	Extension of co-operative agreement for handling westbound grain to Kamloops to include freight traffic. Vancouver to be made interchange point.

Okanagan Valley- Vancouver, B.C.	Handling of freight traffic by one Company for the other.
System	Territorial withdrawals of duplicate telegraph offices on a reciprocal basis.

Other Projects which have received Study.

Montreal-Vaudreuil	Pooling of suburban service.
Okanagan Valley	Pooling of train and boat services.
Shannonville- Darlington, Ont.	Abandon C.P.R. line and use jointly C.N.R. line.
North Bay- Yellek, Ont.	Abandon 7.9 miles C.N.R. line and joint use of C.P.R. line and station.
Sudbury- Winnipeg, Man.	Abandonment of duplicate lines.
Kamloops- Vancouver, B.C.	Abandon either C.N.R. or C.P.R. line and joint use of other line.
Halifax, Yarmouth, Regina, Saskatoon.	Freight Terminals Regina and Saskatoon and joint facilities Halifax and Yarmouth.
North Bay, Ont.	C.P. station facilities to be used jointly.
Sudbury, Ont.	Joint Passenger and Freight Terminals.
Ottawa, Ont.	Joint use of C.P.R. locomotive terminal facilities at Ottawa West and of C.N.R. locomotive facilities at Deep Cut.
C.N.R. & C.P.R. Telegraph Cos.	Consolidation of Commercial Telegraph Companies.
C.N.R. & C.P.R. Express Cos.	Consolidation of Express Departments.
St. Johns, P.Q., White River, Vt.	Running rights for C.P.R. trains over C.V.R. tracks.
Sherbrooke, P.Q., St. Johnsbury, Vt.	Handling of C.P.R. freight traffic to New England points via C.N.R. lines.
Montreal.	Montreal Joint Stock Yards.
Kamloops-Hope, B.C.	C.P.R. to use C.N.R. line for freight service and C.N.R. use C.P.R. line for passenger service.
Pacific Coast Steamships	Amalgamation of present fleets under a separate company or the elimination of duplicate service.

OUTLINE SUBMISSION

71. All of the cooperative measures discussed before the Duff Commission on whose recommendation the Act was passed, and many other similar types have been closely scrutinized. Few of such projects have been found possible of realization.

72. Certain line abandonments agreed upon by the railways were refused by the Board of Transport Commissioners on representations by provinces and industries and communities served by such lines of railway.

73. The joint committee of the two railways is still active in seeking further cooperative economies. The extent to which savings can be made is uncertain as conditions have changed greatly since the Act was passed in 1933. The population of Canada has increased by approximately one-third and the country has become much more industrialized. The Canadian Pacific is today operating the same number of miles of railway as it was in 1933 but the revenue freight ton miles have increased from 9,353,118,000 in 1933 to 25,218,400,000 in 1948, that is an increase of 267%."

FURTHER SUBMISSIONS

In addition to measures taken in accordance with established joint facility procedures, or pursuant to the 1933 Act, the two railways have been active in other forms of co-operation. For example, the Communications facilities of the two railways have been integrated to a considerable degree. Also, numerous co-operative measures involving the handling of Express traffic of the two railways have been effected. Joint advertising by the respective traffic departments has done much to eliminate duplication in that field. At Vancouver the joint operation of the new Hotel Vancouver on behalf of the Canadian National and Canadian Pacific, and the closing of the old Vancouver Hotel, formerly owned and operated by Canadian Pacific, is another example of joint co-operation.

Among the submissions which have been made to your Commission in connection with co-operative economies under the Canadian National-Canadian Pacific Act, it has been urged that the Board of Transport Commissioners should refuse to grant to the railways increases in rates until the railways have satisfied the Board that they have performed the duty which rests upon them

under the Act to introduce co-operative economies. Similar arguments have been put forward in the recent cases before the Board. It is urged either that the Board was wrong in holding that it had no jurisdiction in such matters or that the Board's power should be so enlarged as to give it jurisdiction to require the making of such economies and, where necessary, to refuse to grant increases in rates until such economies have been achieved.

Canadian Pacific is opposed to these suggestions on the ground that they are completely impracticable. It does not, of course, ask that it be relieved of the obligation imposed by the Canadian National-Canadian Pacific Act but it points out that if increases in rates were to be refused to one railway as a result of the failure of another railway to co-operate, grave injustice might well arise. That is to say, the failure to co-operate may be the failure of one or the other of the two major railway companies and the refusal to grant increases in rates affects not only the other of the two large railway systems but also all other railway companies which have no similar obligation under the Act. It is, therefore, possible that the penalty for the failure of the Canadian Pacific to co-operate might be visited upon the Canadian National or any of the other railways which were not in breach of any obligation. Similarly, the failure of the Canadian National to agree to a co-operative measure would result in penalty on the Canadian Pacific even though in a given case that failure was not the result of breach of obligation under the Act by the Canadian Pacific.

There is also danger that, if the Board should, on an application for increase in rates, either adjourn or reject the application until full investigation is had to see whether co-operation could have been achieved, the railways could be deprived of needed revenue for a considerable period. This would work a substantial injustice, particularly in cases in which the

Board should discover that there was no breach of the obligation under the Act by either of the two railway companies. Care must at all times be taken, in the submission of Canadian Pacific, to avoid falling into the error of believing that co-operative measures are in any way tied to increases in rates. Let there be a penalty, if desired, upon the railways for failure to carry out their obligations under the Act but that penalty, in the submission of Canadian Pacific, should not take the form which has been urged before your Commission and before the Board.

OUTLINE SUBMISSION

"74. Canadian Pacific submits that the Act has served and can continue to serve a useful purpose. In addition, the Act has a restraining effect on wasteful competition. No amendment of the Act is necessary."

FURTHER SUBMISSIONS

At the same time it seems obvious that co-operative measures cannot in the very nature of things be relied upon to provide savings of such magnitude as to avoid the necessity of rate increases. Co-operative measures are possible only on the assumption that there is substantial unused capacity in one or the other of the two railway systems. This was undoubtedly true of the depression years but traffic has increased very materially since the Act was passed and the opportunities for co-operative economies have accordingly decreased. Moreover, if railways are to continue to be competitive with each other, and this appears to be desirable in the public interest, it follows that full co-operation must in the very nature of things be impossible.

OUTLINE SUBMISSION

"Clause 2(f) of the Order-in-Council provides:-

'2(f) Report upon any feature of the Railway Act (or railway legislation generally) that might advantageously be revised or amended in view of present day conditions.'

75. Canadian Pacific is a public service corporation and recognizes that regulation of such corporations within proper limits is in the national interest. The proper limits of regulation are a matter of fine balance between necessary protection of the public interests and undue interference in functions of management. The trend should be towards less rather than more regulation of railways, because of the increasing strength of other media of transport competing with the railway industry.

76. If regulation is to be equitable and effective it must be impartial and certain and in cases of dispute, definitive, within a reasonable time. Otherwise regulation becomes oppression to the detriment of the service performed for the public by the regulated industry.

77. The Board of Transport Commissioners as an administrative and semi-judicial tribunal must at all times be able to render its decisions free from political influences. Unless this is the case the Board will not have the confidence of the public and of the railways which is so necessary to it in the performance of its important functions under the Railway Act. Anything which destroys such confidence and the stature of the Board is a disservice to Canada.

78. Appeals from the Board should be limited to those involving questions of law and jurisdiction and should be made only to the Supreme Court of Canada. Appeals to political tribunals have a stultifying effect upon the Board and upon the impartial and judicial exercise of its powers.

79. Canadian Pacific Submits that appeals from the Board to the Governor-in-Council should be abolished and that a recommendation should be made to amend the Railway Act by deleting Section 52(1)."

FURTHER SUBMISSIONS

At common law those engaged in a "common calling" were required to serve all who applied at reasonable rates (e.g.,
(1)
innkeepers, armorers, candle mongers).

The introduction of railways as common carriers in England brought into the English law the concept of control of business beyond that required at common law. At the outset certain restrictions were imposed in the charters incorporating the railway companies.
(2)
Later, general legislation applicable to railways with more minute control was enacted.

(1) Holdsworth, History of English Law. Vol. II. p. 467; See also C. K. Burdick, Origin of the Peculiar Duties of Public Service Co. 11 Col. L Rev. 514-6.

(2) Great Western Ry. v. Sutton (1869) L.R. 4, H.L. 226, Blackburn J. at 237.

It was not until there existed statutory provisions either in the charters incorporating the railway companies or in the first general legislation that railways were, for example, obliged to refrain from undue preference or unjust discrimination.⁽¹⁾

The development of railway transportation legislation in the United States, while later in time, paralleled that of England. In the United States the activities of railway promoters in the mid-western states, particularly in regard to preferential rates and discrimination between shippers, added impetus to Government regulation.

Regulation of services, rates and operating practices of common carriers has always been recognized as contrary to the principles of free enterprise.⁽²⁾ Without any acceptance of socialistic or quasi-socialistic principles, regulation of common carriers was justified on the basis of protection of the public on account of the particular circumstances in which railway undertakings operated.

So long as a traveller or a shipper had a choice between using his own vehicle or that of a common carrier, whether the movement was by road or through coastal or inland waterways, there was no need for Government interference with the functions of management of a common carrier.⁽³⁾ The development of the country where goods were required to move relatively long distances inland, even before the advent of railways, was putting a strain on the concept of the shipper's or traveller's freedom of choice between his own vehicle and that of a for-hire carrier. The introduction of railways as a means of carriage brought radical changes into the field of transportation. Railways were costly undertakings which could not be duplicated by the individual.

In England, the first approach was for the railway company to build the line of railway and individual shippers would move their traffic over the line in their own vehicles on payment of a toll. This system was soon found unworkable

(1) *Baxendale v. Great Western Rly.* (1858 L.R. 5 C.B. (N. S.) 336, Cockburn C.J., at 351.

(2) *Railway & Canal Act of 1854 compared to Interstate Commerce Act of 1887.*

(3) *Discrimination by Railroads*, I. B. Lake, pp. 29-30 (Edwards & Broughton Co. 1947).

and railway companies then provided not only the line of railway, but the vehicles that moved over it.⁽¹⁾

In the development of the United States and Canada, railways became indispensable to the movement of commerce. Moreover, on account of the large land mass which had to be traversed, huge expenditures were required for the construction and operation of individual railway companies. Therefore, such railways became powerful monopolies. The services such monopolies provided were essential public services and it early was recognized and accepted as a principle that the right to engage in a railway undertaking was accompanied by statutory obligations which prevented abuses of the monopolistic power of the undertaking.

Canada had the experience of England and the United States to follow. There was general railway legislation in the Province of Canada and after Confederation general legislation was passed applicable to railways within Dominion jurisdiction.

Section 12(6) of the Railway Act of Canada 1868 (S.C. 1868 Chap. 68) states the matter clearly in regard to rates:-

"12(6) All or any of the tolls may, by any bylaw, be reduced and again raised as often as deemed necessary for the interests of the undertaking: But the same tolls shall be payable at the same time and under the same circumstances upon all goods and by all persons, so that no undue advantage, privilege or monopoly may be afforded to any person or class of persons by any by-laws relating to the tolls."

Section 12(9) and (10) of the Railway Act 1868 vested in the Governor-in-Council general approval over all rates when first established, with power to revise rates from time to time.

Since the first Canadian Railway Act, regulation of Canadian railways has not basically altered, although the trend until about twenty-five years ago, was one of expanding government control. Since 1925 there have been no major extensions of Government regulation of railways in Canada; nor, however, has there been any major diminution of the amount of control exercised.

(1) Railway Transportation, C. L. Raper, pp. 8-9; (Putman's Sons, 1912).

The transportation scene has materially altered in the last twenty-five years. Railways no longer have a monopoly on large portions of their business. Private motor cars, autobuses and aircraft are competitors in the passenger-carrying field. Aircraft are rapidly gaining status for the transfer of express. Private, commercial and common carrier trucks are competitors in the movement of freight. For personal transportation or movement of many types of traffic, the public has, just as before the introduction of railways, a real choice between use of a personal vehicle or two or more competing for-hire transport agencies.

Thus, Canadian Pacific submits, the justification for interference with the functions of railway management to protect the public must now operate within a narrower field than formerly and the trend of regulation of railways should be toward greater freedom for management, rather than less.

Railways still have a virtual monopoly in Canada for long-haul movement of many bulky, relatively low value commodities. Railways still are the most efficient transport media for the mass movement of persons and goods over long distances, especially where there is light traffic density. Railways recognize, therefore, that some regulation of their enterprise is to be expected and deemed in the public interest. Such regulation must always, it is submitted, stand the test of whether it is necessary in the public interest. If any regulation cannot stand such test, its retention can only be supported on the principle of using railways as an instrument of socialistic policy.

Even where regulation can stand the test of necessity for protection of the public, such regulation must be definite. Disputes must be settled solely on their merits and decisions must be rendered without undue delay. This fact has been universally recognized and was the principal reason why the body regulating railways in Canada was changed in 1903.

Prior to 1903, railways in Canada were regulated by the Railway Committee of the Privy Council. This body was first constituted by the Railway Act of Canada 1868 (Sections 23-47). The Railway Committee of the Privy Council was composed of elected representatives of the Canadian people. Its members were charged with all the responsibilities of Ministers of the Crown, as well as their duties regarding the regulation of Canadian railways. The Committee had not the time, nor the opportunity, nor the facilities for taking up questions respecting the control and regulation of traffic upon railways and the rates and tolls to be charged by them. This work could be more efficiently performed by a tribunal specially constituted for that purpose (Hansard 1902, Hon. A.G. Blair, Minister of Railways, p. 2436).

The abolition of the Railway Committee of the Privy Council and the substitution of the Board of Railway Commissioners resulted from an investigation and report by Professor S. J. McLean (Sessional Papers 1902, No. 20(a)). Professor McLean at p. 37 found:-

" The defects in the Railway Committee as a regulator of railway transportation I would place under the following headings:-

- (1) It has a dual function - political and administrative;
- (2) The lack of migratory organization renders it impossible to deal effectively with complaints;
- (3) The distance to be travelled by the complainants renders the expense too great;
- (4) There is a lack of technical training for the work;
- (5) The existing organization is not sufficiently permanent."

In Professor McLean's report and in the Commons Debates when the 1903 legislation was under consideration, it was recognized that if the regulatory tribunal proposed was to be successful, it had to have the confidence of all. The Hon. Mr. Blair, (1902 Hansard 4237) stated:-

" . . . the character, the capacity, the wisdom and the selection of the men is everything. Unless this Committee can afford men . . . of independence of character and of firmness and of fairness, men who have experience in business, experience in railway operation, experience in law. . . we cannot hope that the Commission . . . will be successful. We have to give these men such a tenure as will invite those we want . . . long enough to induce them to give up a business. We have to pay them well."

The ability to achieve the objectives so clearly expressed by the Hon. Mr. Blair is in serious jeopardy, because of the right provided in the Railway Act to appeal from the decisions of the Board to the Governor-in-Council.

The history of the appeal from the railway regulatory body to the Governor-in-Council is a long one.

Under the Railway Act of 1888 (Statutes of Canada, Chap. 29) an appeal was provided to the Governor-in-Council from the Railway Committee of the Privy Council. Professor McLean, in his report, recommended the retention of such an appeal. The reason he gave was that it was necessary to have such an appeal to safeguard the principle of ministerial responsibility. It is submitted, however, that the appeal provided by Section 52(1) is not necessary to safeguard the principle of ministerial responsibility because of the provisions of Section 36 of the Railway Act. That section empowers the Minister of Transport to request the Board to "inquire into, hear and determine any matter or thing which under this Act it may inquire into, hear and determine upon application or complaint". Moreover, government responsibility is adequately provided for by the present Section 38 of the Railway Act which enables the Governor-in-Council to refer to the Board for report any matter arising out of the Railway Act or any other Act of the Parliament of Canada.

Since the inception of the Board of Railway Commissioners there have been fifty-one appeals to the Governor-in-Council. Only three of these were allowed. Fourteen were referred back to the Board for further consideration. The balance were

either dismissed, withdrawn or abandoned. That the power of appeal to the Governor-in-Council was open to abuses has been recognized. For instance, in City of Montreal v. Canadian Pacific - Park Avenue Case, 1912, dealing with an Order closing certain streets in Montreal, the Prime Minister, Rt. Hon. R. L. Borden, one of the members hearing the appeal to the Governor-in-Council, said:-

" It rather seems to me that the statute is designed to give the Governor-in-Council the right to interfere in very urgent or extreme cases because it confers on the Governor-in-Council the power of intervention without petition from either party None of these things are provided here You may say that there may be cases in which the Board of Railway Commissioners for Canada may establish some principle which would work great injustice upon municipalities, or on the other hand upon railway companies. It seems to me that the better course in case of any such injustice, is to have some tribunal where the subjects could be much better considered than they can be considered here. A tribunal of that kind . . . ought to be in a very much better condition to lay down a general principle than the Gentlemen who for the time being happen to constitute the Privy Council of Canada. I say that with all due respect to ourselves."

Section 52(1) of the Railway Act is an invitation to the public to have railway problems considered in a political forum and to attempt to have such problems decided on political considerations rather than upon the merits and upon the evidence. Important railway problems should not be open to decision by a transitory body which the Governor-in-Council must of necessity be. The Governor-in-Council has not the time nor the training to consider the voluminous evidence developed in disputes of magnitude such as general rate cases. Of necessity, therefore, the Governor-in-Council's decision must be given on considerations other than the facts and merits of the case. A right of appeal to such a tribunal is open to other abuses. It constitutes an invitation to parties in interest to make ex parte representations and thereby bring pressure to bear upon the tribunal. A striking example of such ex parte representations can be found in the representations made ex parte on three separate occasions in advance of the formal appeal, which was set down and argued

in September 1948, from the judgment of the Board in the 21% Case. When the appeal came on for hearing, the Governor-in-Council set aside two days for that purpose. During the course of two days, seven provincial governments and the railways together attempted to present arguments based upon a hearing that occupied 150 days before the Board of Transport Commissioners.

The shortcomings of political tribunals to deal with such complex matters as railway regulation are clearly pointed up in the following passage from the Report of Professor S. J. McLean to which earlier reference was made.

"The attempt to regulate such matter through politically organized bodies has not succeeded. The regulation is essentially an administrative function; an intermingling of this with political duties leads to lack of harmony and efficiency. The regulation of the railroad question, in the public interest, demands technical training. It demands all the time of those engaged in such matters. They should be concerned, not only with the settlement of grievances when they arise, but also with an attempt to prevent grievances. The duties of political officials prevent the exercise of such functions. Under a system of private ownership and management of railways, the only efficient method of controlling them in the public interest is through entrusting such matter to an efficiently organized Railway Commission."

This and other references in Professor McLean's Report indicated that the prime purpose of establishing the Board was to remove railway regulation from the political arena and to place it in the hands of an administrative tribunal with the necessary technical training and assistants. As previously indicated, the Appeal to the Governor-in-Council from the Board was retained on the theory that it was necessary to preserve ministerial responsibility. Canadian Pacific submits that the retention of the Appeal, justified as it may have been in the transition period following the formation of the Board, no longer exists.

In 1903 it was decided to take politics out of railway regulation. Either that decision was right and politics should be completely taken out of such regulation or it was wrong and an independent tribunal such as the Board should be instructed that

in their decisions they must take into consideration not only the facts and merits of any dispute but also the political implications of their decisions.

The Railway Act provides for an appeal from the Board to the Supreme Court on matters of law and jurisdiction. The decisions of the Board of Transport Commissioners are final on questions of fact but Section 52(1) allows the Governor-in-Council to review, vary or rescind decisions whether of law or fact. Canadian Pacific submits that there is no necessity for an appeal on questions of fact from the Board. The Board, assisted by their experts and with their knowledge of transportation problems, and after hearing evidence, is the only body that can intelligently and equitably deal with disputes between the public, government bodies and the railways. The protection of the public interest does not require an appeal from the Board to the Governor-in-Council. If the Board issues orders which are truly contrary to the public interest of Canada, the public is protected by the ability of the Minister to refer matters to the Board, by the ability of the Governor-in-Council to refer matters to the Board, and by the overriding ability of Parliament at all times to amend railway legislation.

Under the Act as it now stands, an appeal to the Supreme Court of Canada upon any question of law can only be had if the Board decides that the question is one of law and grants leave to appeal. If, on the other hand, an appeal is desired upon a question of jurisdiction, an appeal may be had upon leave being obtained from a Judge of the Supreme Court or upon leave being obtained from the Board. It would not seem to be right that the Board, which rendered a decision that involves a question that may be one of law, should be the only tribunal to determine whether such question is one of law and whether an appeal should be had. The problem that arises in determining whether a particular question is one of law or of fact is often a difficult one.

In *Rogers Majestic Corporation vs City of Toronto* (1943) S.C.R. 440 the judgment of the Supreme Court at page 446 states:-

"Whether there is a question of law or the construction of a statute upon which an appeal lies to the Court of Appeal is not always free from difficulty. Probably no satisfactory definition can be framed so as to cover all circumstances."

In *Farmer vs Cotton's Trustees* (1915) A.C. 922, Lord Parker at page 932 points out that it is not always easy to distinguish between questions of fact and questions of law and that the views expressed in the House of Lords had been far from unanimous. It follows then that the court to whom it is proposed to take an appeal should be the tribunal to determine whether the decision of the lower tribunal has raised a question of law or of fact and whether in the circumstances leave to appeal should be granted.

It is respectfully submitted that it should be open to a Judge of the Supreme Court of Canada to determine on the application of an interested party whether a question arising out of a decision of the Board is one of law and whether leave should be granted. It is therefore submitted that your Commission should recommend that Subsection 2 of Section 52 should be amended by inserting after the words "question of jurisdiction" in line 2 thereof the words "or upon a question of law".

Crow's Nest Pass Rates on Grain and Grain Products.

OUTLINE SUBMISSION

"80. Canadian Pacific submits that it is desirable that freight rates in Canada without exception should in all respects be subject to the jurisdiction of the Board of Transport Commissioners.

81. It is recognized that the national policy may require special assistance to the producers of grain in Western Canada, but Canadian Pacific submits that any relief given in this respect should not be at the cost of other users of railway services or of the railway companies."

FURTHER SUBMISSIONS

The Railway Act requires that freight rates be just and reasonable and this means not only that they be just and reasonable

to shippers as a whole, but also to all groups of shippers as well as to the railways. The vesting of jurisdiction in the Board in connection with grain and flour is necessary in order that rates may be just and reasonable rates for other kinds of traffic. This is so because if the grain rates are deficient the rates on the other traffic must be forced to a higher level than otherwise would be justified.

To remove from the jurisdiction of the Board a large segment of a rate structure which the Board is charged with controlling is clearly wrong in principle and detrimental to sound rate making and to the efficient operation of a railway undertaking. This has been recognized in the United States where a statutory reduction in the general level of rates for moving Government traffic was repealed in 1945. The so-called "Land Grant Rates" were deleted from the United States Transportation Act by Public Law 256 - 79th Congress - Chapter 573 - 1st Session - H. R. 694.

Canadian Pacific submits that a recommendation should be made that Section 325(5) of the Railway Act be amended by striking out the following proviso:

" . . . Provided that, notwithstanding anything in this subsection contained, rates on grain and flour shall, on and from the twenty-seventh day of June, one thousand nine hundred and twenty-five, be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada 1897, but such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament."

and that Section 325(6) of the Railway Act should be repealed.

Section 325(6) of the Railway Act is:

"6. The Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees, or localities or of undue or unreasonable preference, respecting rates on grain and flour, governed by the provisions of chapter five of the Statutes of Canada 1897, and by the agreement made or entered into pursuant thereto within the territory in the immediately preceding subsection referred to, on the ground that such discrimination or preference is justified or required by the said Act or by the agreement made or entered into pursuant thereto.
1919, c. 68, s. 325, s. 52, 48, 2 and 3."

The effect of such amendments would be to place the rates for the movement of grain and grain products wholly within the jurisdiction of the Board of Transport Commissioners.

In support of this submission, Canadian Pacific presents the following:

Historical Outline of the Crow's Nest Pass Rates

As a result of an agreement between the Canadian Pacific and the Dominion of Canada made in 1897, there was introduced into certain rail movement of grain and grain products a fixed level of rates on these commodities.

In 1897 Parliament passed "An Act to authorize a subsidy for a railway through the Crow's Nest Pass" (Statutes of Canada 60-61 Vic., Chap 5). Under the Act the Governor-in-Council was authorized to grant to the Canadian Pacific a subsidy of \$11,000 per mile but not exceeding \$3,630,000 towards the construction of a line of railway from Lethbridge, Alta., through the Crow's Nest Pass, to Nelson, B.C. The grant was subject to the Company entering into an agreement incorporating the conditions outlined in the Act.

Under the agreement of 1897, to earn the grant provided by the statute, Canadian Pacific entered into an agreement under which it assumed certain obligations. These obligations were of two types:-

- (1) as to the line of railway, its construction and operation;
- (2) as to rates.

As to the line of railway, the Company agreed to build it following a certain course and to certain specifications, to complete it within a specified time and, thereafter, to operate it forever properly maintained and with adequate rolling stock.

Under arrangements with the Province of British Columbia, Canadian Pacific by building the line of railway earned the right to certain lands. The agreement provided that these lands were to be sold to the public at prices approved by the Governor-in-Council

and that the Company would convey to Canada fifty thousand acres of coal-bearing lands.

The line of railway was built and the Company received from the Dominion \$3,404,720.

As to rates, the Company agreed that local rates on the line of railway and certain other Canadian Pacific lines in British Columbia, and rates to and from such lines of railway "shall be first approved by the Governor-in-Council or by a Railway Commission" when established, and thereafter be subject to revision and control by such bodies. This covenant on the part of Canadian Pacific was necessary to give the Governor-in-Council or to the Board, when established, jurisdiction over Canadian Pacific freight rate levels.

In 1897 Canadian Pacific, in regard to freight rates, was in a different position from other railway companies. Other railway companies had their freight rates subject to approval by the Governor-in-Council; on the other hand, rates on the Canadian Pacific were not subject to reduction by the Governor-in-Council until the earnings of the Company exceeded ten percent on the capital investment. This was the result of a special provision in the Canadian Pacific Charter and subsequent amendments to the Railway Act. This relative freedom of rate making on lines of the Canadian Pacific must, it is submitted, be kept in mind when looking at the other covenants as to rates set forth in the 1897 agreement.

The other covenants as to rates in the 1897 agreement were:

- (1) to grant in perpetuity varying percentage reductions on certain commodities from points on Canadian Pacific lines then in existence in Eastern Canada to points on Canadian Pacific lines then built in the West;
- (2) to grant in perpetuity a reduction of three cents per hundred pounds on grain and flour from points on Canadian Pacific lines then existing in the West to Fort William and points east thereof.

The rate reductions provided by the 1897 agreement or lower rates were in effect until 1918. In that year the railways'

imperative need for additional revenue on account of increased costs of labour and materials was recognized by the Dominion Government which, by order under the War Measures Act, suspended the effect of the Crow's Nest Pass agreement and permitted the rates subject to the agreement to be increased. This order was applicable until 1919, when its effect was continued by an amendment to Section 325 of the Railway Act, incorporated in the consolidation of 1919. The suspension of the Crow's Nest Pass rates on grain eastbound and the reductions on the specified commodities westbound was to be effective for a period of three years only. In 1922, pursuant to a statute the Governor-in-Council extended the suspension of the westbound rates under the Crow's Nest Pass agreement but reinstated the Crow's Nest Pass rates on grain. By further orders in 1923 and 1924 the Governor-in-Council again extended the suspension of the westbound rates.

Throughout, the Canadian Pacific had taken the position that the reduced rates provided by the Crow's Nest Pass agreement were not applicable to shipping points which were located on Canadian Pacific lines constructed after the date of the Crow's Nest Pass agreement. The result of this was that there was discrimination between various shipping points and various areas of Canada. This discrimination would have been unjust under the discrimination section of the Railway Act but Canadian Pacific contended that the discrimination was forced upon it by statute and the Crow's Nest Pass Level of rates could not be taken as a basis for determining whether this constituted unjust discrimination prohibited by the Railway Act.

These contentions of Canadian Pacific were upheld by the Supreme Court of Canada in Governments of Alberta, Saskatchewan and Manitoba v. Canadian Pacific Railway Company, 1925, S.C.R. 155.

The rate reductions provided by the 1897 agreement were unworkable without adversely affecting the Canadian economy and this was recognized by the Board of Railway Commissioners and by

Supreme Court. Mr. Justice Anglin's remarks, found at 174 of the above judgment are apposite:-

"If, under the existing law, unreasonable rates must be imposed or unfair discrimination sanctioned, with the resulting chaos and other ill effects so graphically portrayed in the opinion of Mr. Commissioner Boyce, the remedy lies with the High Court of Parliament. By amending the existing law it may either itself do, or may empower and require its delegate, the Board, to do as full and complete justice as circumstances admit. Fortunately Parliament is presently in session. Whatever remedy, if any, it may in its discretion consider necessary or desirable can be speedily afforded."

In 1925, after the decision of the Supreme Court, Parliament did take action. Section 325(5) of the Railway Act 1919 was repealed and the present Sections 325(5) and (6) of the Railway Act 1927 were enacted - (S.C. 1925, 15-16 Geo.V., Chap.52).

Under the amendments made in 1925, special acts or agreement were not in any way to affect the power of the Board to fix just and reasonable rates and to change and alter rates as changing conditions or cost of transportation required; except that grain and flour from all points on all lines of railway west of Fort William to Fort William or Port Arthur were to be at the level fixed under the agreement of 1897. Moreover, the agreement of 1897 fixing rates on grain and flour could not be used to justify unjust discrimination or undue or unreasonable preference respecting grain movements.

As a result of the statute of 1925, railways other than Canadian Pacific which had found it necessary in many cases for competitive reasons to apply the Crow's Nest rates, became bound to apply them not only from competitive points but from all points. It followed also that Canadian Pacific, which had been compelled to apply such rates only from shipping points existing at the date of the 1897 agreement, had to apply such rates from all points. Moreover, at the time the agreement was executed, rates from shipping points on branch lines were often at a higher level than from points of an equal distance but located on the main line. These branch line points complained that their rates under this

system were unreasonable and unjust and that their rates for the movement of grain and flour should be on the same basis, mile for mile, as main line rates.

The matter was considered by the Board in the General Freight Rates Investigation of 1927 and by its General Order No. 448, among other things, it ordered:

"1. That the rates on grain and flour from all points on Canadian Pacific branch lines west of Fort William to Fort William, Port Arthur and Westfort be equalized to the present Canadian Pacific main line basis of rates of equivalent mileage groupings (the rates governed by the Crow's Nest Pass agreement not to be exceeded): that the Canadian Pacific Railway Company publish rates in accordance with the above direction, and that all other railway companies adjust their rates on grain and flour to Fort William, Port Arthur, Westfort and Armstrong to the rates so put into effect by the Canadian Pacific Railway Company, such changes to become effective on the twelfth day of September, 1927."

The effect of this Order, which was applicable to all railways, was to reduce rates on grain and flour from certain points below the level existing under the Crow's Nest Pass agreement.

The final result is that the Eastbound rates on grain and flour are still 3¢ below the level established in 1897 with certain exceptions where the rates are more than 3¢ below that level because of the operation of the order of the Board above referred to. These rates now are applicable on grain and flour on the same basis, mile for mile, on main lines or branch lines from all points on all lines of railway west of Fort William to Fort William and Port Arthur.

A further effect of the 1925 statute was that in 1927 the Board ordered a reduction on grain and flour moving through Pacific Coast ports for export to the Crow's Nest Pass level.

This arose from the fact that prior to 1927 many complaints were made by British Columbia interests that the westbound rates on grain and grain products were unfair to British Columbia. They proposed that the Crow's Nest rates be established from Prairie points westbound to Pacific Coast ports. The Board, after a hearing, ordered that the Crow's Nest rates be applied

on grain and flour to British Columbia Coast ports for export. This order was reviewed by the Board in the General Freight Rates Investigation and by Order No. 448 of 26th August, 1927, among other things, it was ordered:

"2. That the rates on grain and flour from Prairie points to Vancouver and Prince Rupert for export shall be on the same basis as the rates to Fort William, but in computing such rates, the distance from Calgary to Vancouver via the Canadian Pacific Railway shall be assumed to be the same as from Edmonton to Vancouver via the Canadian National Railways, namely, 766 miles."

It should be noted that while the Crow's Nest Pass agreement and the statute of 1925 dealt with grain and flour, the Crow's Nest Pass rates extend to commodities other than grain and flour. The commodities covered or affected by Crow's Nest Pass rates are generally described as grain and grain products and will be found in Canadian Pacific Tariff W 819, C.T.C. No. W 3810. For example, bran and middlings are not grain and may not be flour but they receive the benefit of the Crow's Nest Pass rates. The residuum of grain in brewing and distilling known as brewers' and distillers' dried grain also receives the benefit of the Crow's Nest Pass rates. The last mentioned commodities are really a dry mash.

It is thus apparent that the railway, whether technically required to do so or not, have in the past felt that it would be difficult to justify charging a higher rate on a by-product of the milling process of grain than on its most valuable product, flour. This was also true of the by-products of the brewing and distilling industry used for livestock feed in competition with bran and middlings which are by-products of the milling of flour. For similar reasons, as new feed products have been developed, such products as beet pulp residue used for live stock feeding have also secured the benefit of the Crow's Nest Pass level of rates.

In 1948 the Board refused to apply the 21% increase in domestic grain rates within Western Canada because in the

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Board's view this would have made too great a spread between domestic rates and Crow's Nest Pass rates.

It is thus apparent that the effect of statutory rates such as those on grain and flour is to extend the benefit of them beyond the intention of the statute. This is not the least of the matters which, in the submission of the Canadian Pacific, justifies the restoration of these rates to the jurisdiction of the Board and a careful consideration by that Board as to the problems to which such rates give rise.

We thus find that an agreement to apply the Crow's Nest rates had effects far beyond the contemplation of the parties at the time the agreement was made, in the following respects:-

(a) It was found impracticable to limit the application of these rates to the points covered by the agreement;

(b) It was found impossible to limit their application to the Canadian Pacific and, in consequence, railways not parties to the agreement were forced to apply these rates;

(c) The Board, on a complaint from British Columbia, found the difference between eastbound grain rates and the rates on grain through British Columbia ports for export unjustified. Accordingly the level of rates fixed by the agreement was extended in a way which the parties to the agreement never contemplated;

(d) The railways found that although the agreement covered only grain and flour, it was not practicable to deny the extension of these rates to by-products of the milling of grain and of other competing products;

(e) The effect of the statutory fixing of rates on grain and flour has been reflected by order of the Board in the domestic grain rates in Western Canada.

It is abundantly clear that the Agreement, in so far as it related to freight rates, proved to be wholly unworkable. In the view of the Supreme Court of Canada it produced "chaos and other ill effects" that could only be remedied by Parliament.

It is perfectly clear that the Crow's Nest Agreement, as interpreted by the Supreme Court of Canada, affords no justification for the rates that were imposed by the 1925 amendment and the other rates that have of necessity been brought into line with the Crow's Nest Pass rates.

Canadian Pacific wishes to emphasize that in advocating the repeal of the provisions of The Railway Act relating to the rates on grain and flour, it cannot be accused of seeking merely to avoid a contractual obligation. Rather the question is whether the burden of the original obligation having been transferred to others, not parties to the Agreement, those others are to be required to continue to carry that burden.

Canadian Pacific also points out that it received less than three and one-half million dollars under the terms of the Crow's Nest Pass Agreement. The reduction in grain rates between 1897 and 1903, when the Canadian Pacific became subject to regulation of its rates by the Board, was borne wholly by the Canadian Pacific and was not in any sense borne by other shippers. This was because until 1903 the Company was permitted by statute to have net earnings up to ten per cent of its capital investment without interference by the Governor-in-Council with the level of its rates and also because in that period it never at any time reached that level of earning power.

Between 1903 and at least 1917, when the first general increase in rates in Canada was effective, the reduction brought about by the Crow's Nest Pass Agreement was probably in a large part borne by the Canadian Pacific because it did not during those years receive net earnings which in any way could be considered a maximum level of earning power, nor did it obtain any general increase in its rates.

During the war years the railways were permitted to increase all rates including the rates on grain and grain products.

After 1922, however, when the Crow's Nest Pass rates were restored, the probability is that the greater burden imposed by the low level of these rates has fallen upon shippers and consignees of other traffic.

That the burden of the low level of grain rates at present rests mainly upon the shippers and consignees of other than grain traffic can be demonstrated by reference to the Board's Judgment in the 21% Case. At page 66 of the Judgment (XXXVIII J.O.R. & R.) the Board found the deficiency in revenue of the Canadian Pacific at something more than thirty million dollars. This additional revenue had to be derived by an increase in rates on traffic having a revenue value to the Canadian Pacific of slightly more than \$137,000,000 and the resulting increase was therefore 21%. If it had been applied also to grain traffic the increase would have been applied to a total of approximately \$170,000,000 of traffic and the resulting increase would have been only about 18% instead of the 21% allowed by the Board on the formula it adopted.

Economic Aspects of Grain Rates

There can be no doubt that in the interest of both the railways and the shippers rates on grain and grain products should be at a level which will permit the maximum economic production and movement of these commodities. Such rates should be as low as possible, subject to the principle that they should be reasonably compensatory. If the rates are not reasonably compensatory, it follows that other shippers or the railways or both are subsidizing the producers and consumers of grain and grain products. It is the view of Canadian Pacific that the shippers and receivers of commodities other than grain and grain products in Western Canada, and the shippers and receivers of all commodities including grain and grain products in Eastern Canada, should not be expected to pay freight rates on a substantially higher level than otherwise would be the case in order that shippers of grain and grain products

in Western Canada enjoy rates on a lower level than they should be. It seems obvious that if the rates on grain and grain products obtaining in 1899 and subsequently were just and reasonable, they must now be unreasonably low having regard to the increased cost of railway operation and the increase in prices of grain since that time.

If national policy requires, under certain circumstances at certain times, special assistance to the producers of grain in Western Canada, Canadian Pacific submits that any relief given in this respect should be at the cost of the nation as a whole, and not at the cost of other users of railway services, or of the railway companies.

However, it is submitted that such assistance should only be extended to the producers of grain in Western Canada if need for such assistance is proven. Obviously need for assistance will vary depending not only on production per acre, but on price. This principle is recognized by existing Dominion legislation such as The Prairie Farm Assistance Act. The present subsidy to Western wheat producers through non-compensatory grain rates is applied universally without any recognition of need or without variation between areas of the West.

In approaching this problem, Canadian Pacific has given careful consideration to the statement frequently made that any increase in the rates charged for the movement of grain from Western Canada to water would inevitably reduce the prices received by the farmer for his grain, and respectfully submits that this statement cannot be accepted as proved.

Transportation is, of course, one of the costs of producing grain, just as are the costs incurred on the farm. If Canadian grain is necessary to meet total world demand, then consumers should pay the full cost of its transportation.

When the market is one which gives a marked advantage to the buyer, the seller may find the price which he obtains

reduced by some or all of the costs of getting the product to market. When, as at present, the price of grain is not established in an open market, but by bargaining between Governments, then there is no more reason for the Government of Canada not protecting the interests of Canadian transportation organizations, in setting the price, than there would be for not protecting the interests of the farmer.

When the market for grain is favourable to the producer the effect is to give consumers in this and other countries a subsidy or bonus at the expense either of the other users of transportation or of the railways. If other rates are maintained at a given level to enable the railways to earn adequate net revenue, the subsidy is provided by other users of transportation. If as is the case today or in a period of depression, rates are not maintained at such a level as to provide adequate net revenue, the subsidy is provided by the railways and their shareholders.

To sum up, Canadian Pacific reminds your Commission that the net return to farmers in Western Canada from the sale of their grain outside that area is the result of a complex of market forces, and that it is impossible to extract from this complex one single factor, such as the cost of transportation from farm to water, and to regard that as being a suitable point to which to direct assistance to the farmers. The average cost of moving wheat for export, for example, from Western Canadian farms to water, is 12 cents per bushel, for an average haul of approximately 770 miles. This is the lowest rate at which such a movement takes place anywhere in the world. It is far below the rate in the United States, which is, indeed, more than twice as high. It should be compared with a typical rate of 19.3 cents per bushel, for moving export wheat a distance by rail of 186 miles in the Argentine Republic, and an average rate of 6.67 cents per bushel for moving export

at an average distance of 180 miles in the State of Victoria, Australia.

When it is remembered that the price of Canadian wheat delivered at water, may, for other reasons, in any season fluctuate by fifty cents or more per bushel, and when it is realized that the recently concluded International Wheat Agreement provides for a range of prices of as much as sixty cents per bushel between the guaranteed maximum and the guaranteed minimum, it must be quite evident that the keeping of rail freight rates on export grain at a level quite out of relation to other transportation charges in the country is a clumsy, costly and ineffective method of subsidizing the production of grain in Western Canada.

It has to be kept in mind that rail transportation is but a part of the total transportation cost of grain. It is quite possible that uneconomically low rail transportation costs of grain in Canada may only produce a benefit to ship owners, or to traders in grain at the expense of Canadian railways or of the users of their services.

It should be remembered that existing freight rates on export wheat were established at a time when they were considered to be appropriate in relation to a price of wheat of approximately 70 cents per bushel. In the 50 years that have elapsed since the present grain rates were put into effect, there have been only four years in which the average price has fallen below the 1899 level. Throughout most of the period the price has been very substantially above 1899 and is now 150% above that year.

Canadian Pacific submits that the so-called Crow's nest rates on grain moved from Western farms to water are not automatically an advantage to Canadian farmers in all circumstances. They have to be regarded as only one item in the cost of producing grain, and therefore they could reasonably be expected to undergo long-term variations comparable with

those which have occurred in connection with other items in the cost of production. For example, ocean rates are allowed to shift freely and there is no more reason why the railways should have their factor in the cost of producing grain maintained at the levels of half a century ago than there would be for expecting Canadian grain growers to maintain the standard of living which prevailed at that time. Canadian Pacific therefore submits that the freight rates for the movement of grain from Western farms to water should be established as other freight rates are. If a national subsidy to the production of grain in Western Canada is justified, it should be paid by the nation, and preferably as a contribution to the major items of cost of growing grain, rather than to the one factor in the cost of production which is represented by rail transportation.

Comparison of Rates on Grain in Canada and the United States

In view of the similarity in circumstances surrounding the production of grain in Western Canada as compared with contiguous areas of the United States it is pertinent to examine past and present grain rates in that country, which are not subject to statutory limitations, but are under the same control by the Interstate Commerce Commission as are other rates.

As previously stated, the average length of haul in Western Canada is approximately 770 miles. Regina, which is 776 miles from Fort William, may be taken as a representative grain shipping point in Western Canada. In the United States, Whately, Montana, is 772 miles from Duluth and is therefore taken for comparative purposes.

The Appendix at p. 89 shows the rates on grain shipped from these two points in 1898 and the changes therein to September 1949. The Chart at p. 90 of the Appendix shows these rates graphically. From an examination of this chart it is apparent that throughout the whole period Regina has enjoyed lower grain rates than Whately, and furthermore

that the disparity has widened in recent years.

What is true of these two points also applies to other points in Western Canada as compared with similar points in the United States. The Appendix at pp. 91-92 shows rates on grain shipped from eight representative points in Western Canada to Fort William, from 1920 to September 1949, contrasted with rates from a like number of points in the United States situated similar distances from Duluth. On the map at p. 93 of the Appendix, the rates in effect in September 1949 from these eight and two additional points on either side of the border are shown.

The table on this map shows the U.S. and Canadian rates and gives the percentage differences between them. The differences are indeed striking.

The fact that Duluth, located at the tip of Lake Superior, is west of Fort William should tend to give the American farmer some advantage over his Canadian neighbour in shipping his grain to the Great Lakes, on account of the shorter rail haul. This factor is taken into account in the Map at p. 94 of the Appendix which shows the rates from representative points of comparable longitude. The table on the face of this map shows the amount by which the Canadian rates to Fort William are lower than the rates to Duluth from comparable points in the United States. It also shows the extent to which the distances to Fort William exceed the distances from comparable American points to Duluth. The comparisons shown in this Table are striking in that notwithstanding the much shorter distances to Duluth, the rates from the comparable United States points are very much higher.

Nor is the validity of the foregoing comparisons limited to grain shipped via the Great Lakes. A similar situation exists with respect to grain shipped west to the Pacific Coast ports for export.

the border. In view of the similarity in the price structure and the disparity in rates it is difficult to credit allegations that higher grain rates would be ruinous to the Canadian farmer. Certainly nothing like this has resulted in the United States, where, in recent years, the largest crops in history have been grown and harvested notwithstanding the increases in freight rates which have taken place concurrently.

Canadian Pacific does not suggest that freight rates should follow ordinary fluctuations in commodity prices. It does, however, suggest that changes in prices of commodities are evidence of value in determining the ability or otherwise of a commodity to bear a rate increase. However, in the case of long term, or major changes in commodity prices, they are usually accompanied by similar changes in the general price level, and these are reflected in railway operating costs. In such circumstances it is imperative that relief be afforded to railways. The present rates on grain were established in 1899 when the price of wheat was 70 cents per bushel. In 1948 the Canadian Wheat Board payment to the farmer as announced up to February 24th, 1949 was \$1.75 per bushel, an increase of 150% above the 1899 price, yet the freight rates remain at the 1899 level.

By contrast, it is found that in the United States during the same period the price of wheat in Minneapolis has increased from 69 cents to \$2.37 per bushel, or by 234%, and taking Whately, Montana, as representative point, freight rates have risen by 37½%.

In retrospect it is possible to examine what would have been the effect on grain rates had they been under the jurisdiction of the Board following the suspension of the Crows's Nest Pass rates in 1918 and had they been subject to the general reductions and increases in freight rates since that time. Again using Regina as a representative point, and comparing it with Whately, Montana, the chart at p. 104 of the Appendix illustrates

in lines 1 and 3 the existing Canadian and American rates respectively. Line 2 of this Chart shows what the level of the Regina rate would have been since 1922 had the Crow's Nest rates not been restored in July of that year, and had the rates on grain been subject to the same percentage increases and decreases as were ordered by the Board of Transport Commissioners on other commodities since that time. The Chart makes clear that even if such increases had been made, the Canadian rates on grain would still be very much below U.S. rates. From the foregoing there is every reason to conclude that under the jurisdiction of the Board, grain rates would still be held to a very reasonable level.

Comparison of Revenue from Grain and Other Traffic in Western Canada in Relation to Service Performed.

The fixing of grain rates by statute while rates on other traffic are under the control of the Board of Transport Commissioners has resulted in grain and grain products making a much smaller contribution to railway revenues in proportion to the service performed than is obtained from other traffic. This is illustrated by the following table:-

CANADIAN PACIFIC FREIGHT TRAFFIC IN WESTERN CANADA

Year and Commodity	Ton-miles 000 000 omitted	Revenues \$ 000 omitted	<u>Percentage of Total</u>		Revenue per ton- miles, cents
			Ton- miles	Revenues	
and grain products	5481	25,549	60.2	43.3	0.47
her traffic	3617	33,500	39.8	56.7	0.93
al	9098	59,049	100.0	100.0	0.65
and grain products	3368	28,086	53.9	38.8	0.83
her traffic	2876	44,240	46.1	61.2	1.54
al	6244	72,326	100.0	100.0	1.16
and grain products	5296	29,129	37.4	20.1	0.55
her traffic	8847	115,866	62.6	79.9	1.31
	14,143	145,000	100.0	100.0	1.03

These years were selected for the following reasons:-

- #1 Year 1916 is the earliest year figures are available. It represents a complete year after the decision of the Board in the Western Rates Case and prior to the 1918-1920 increases.
- #2 Year 1921 is a representative year in that it is later than the 1918-1920 increases and prior to the 1922 reductions. The higher yield from grain traffic in this year is due to the fact that the grain rates which had been increased during the war years had not yet been restored to the Crow's Nest Pass basis.
- #3 Year 1948 is the latest year for which figures are available.

It is to be noted that the table shows that in the year 1916 grain and grain products in Western Canada required 60.2% of the total service given in Western Canada measured in ton miles. The revenue from this traffic on the other hand constituted only 14.3% of the total revenue in Western Canada. In 1921 grain and grain products required 53.9% of the service measured in ton miles and yielded only 38.8% of the revenue. In 1948 grain and grain products required 37.4% of the service and yielded only 20.1% of the revenue. The better showing in 1921 is due to the fact, indicated by the footnote, that in that year the rates reflected increases authorized under the War Measures Act and under the 1919 amendment to The Railway Act, which were later cancelled.

Costs of Handling Grain and Grain
Products in Western Canada in the year 1948.

GENERAL STATEMENT

There are limitations in railway cost finding which have always presented difficulties in attempting to determine the cost to the railway of any particular service or movement of traffic. The nature of railway operations is such that they do not lend themselves readily to cost accounting. Railway statistics and expenses are classified and recorded

essentially for management control and are not maintained to show a breakdown of costs for each type of commodity. Owing to the great variety of goods handled and services performed, it is impossible to state costs for individual services on an exact accounting basis, no matter how detailed the accounts might be.

Notwithstanding these limitations, there are means by which costs may be approximated, particularly when considering the cost of a commodity. One such commodity is grain, which in 1948 accounted for 37.4 percent of the revenue ton miles on the Canadian Pacific in that territory.

While it has always been an accepted principle that any individual freight rate should be directly or indirectly compensatory to the railway, there are at present two factors in the transportation situation which make adherence to this principle vitally important. The first is the narrowing margin between overall revenues and expenses. The second is that increasing competition from highway transportation has reduced the possibilities of recovering losses on low rated commodities by imposing high rates on other commodities.

For these reasons a study has been undertaken involving (a) a detailed field analysis of costs which could be allocated to the grain movement on a local basis (i.e. by sub-divisions and by yards), and (b) an apportionment of other operating costs on reasonable and equitable bases. The study required the application of more than 10,000 man-hours (4 man-years), and covered an elapsed time of about six months.

Method of Handling the Grain Crop

The grain handled in largest quantity is wheat, of which 365,000,000 bushels were grown in the Prairie Provinces during 1948. Barley, oats, rye and corn constitute most of the balance of grain handled. Of 850,000 bushels of these

grains were grown in the Prairies during the same period.

A large portion of the crop is delivered to Fort William and to Vancouver. During 1948, 83,818 cars of grain were delivered by Canadian Pacific to the lakehead, and 15,758 cars to Vancouver (See p. 105 of the Appendix). In addition to these, many cars of grain are moved to mills for processing into flour and other mill products (See p. 106 of the Appendix). During 1948, 29,371 cars of grain were delivered to mills in the Prairie Provinces. All but a relatively small fraction of the last mentioned traffic is for milling in transit and moves at the Crow's Nest rates, plus a small transit charge.

During the spring and summer months a weekly crop report is compiled from information submitted by the Company's agents in Western Canada. The purpose of this report is to anticipate the supply of empty cars required in the various areas to handle the crop expeditiously.

The supply of empty box cars comes generally from Eastern Canada. The movement amounts to many thousands of cars, as may be noted from the Table at p. 107 of the Appendix. During 1948, 32,160 empty box cars moved westward through Fort William. Some of the cars, of course, are used to load other commodities, but a large portion is used to handle the grain traffic. By the middle of August a supply of empty box cars is in storage on sidings in those areas where it is expected the first movement of the crop will take place.

Concurrently, a large stock of grain doors, which are owned by the railway, is built up at each country elevator. Some of the grain doors are shipped new from the manufacturing plants and others from one or other of the reclaiming points. The Table at p. 108 of the Appendix shows that the number of carloads of new grain doors transported during 1948 amounted to 214, while 1,041 carloads were shipped from reclaiming centres. Grain doors are requisitioned in much the same manner as cars, and are moved to stations in way freight or mixed service trains.

When the grain starts to flow and orders are placed for cars by the country elevators, cars are spotted in position by road locomotives. Grain cars are loaded generally to their capacity. During 1948, the average load per car of grain and grain products in Western Canada amounted to 48.7 tons, as compared with all other freight traffic in Western Canada in which the average load per car amounted to 28.5 tons.

Generally speaking, the crop is moved first from Manitoba, then from more westerly points as it matures. In the Fall, grain cars are used as much as possible in a shuttle movement from the elevator to the lakehead and return.

It is sometimes alleged that grain is a particularly economical commodity to handle because it is handled intact in trainload lots from shipping points to the lakehead. This idea is erroneous and should be dispelled. In the first place a trainload over the various subdivisions varies from one hundred cars to less than half that number according to the capacity of the locomotive used and the adverse grades encountered. Secondly, a large number of cars of grain are routed to the flour mills in the prairies and these cars must be switched out of trains at yards enroute. Then too, cars containing the mill output are switched into trains for furtherance to ultimate destination. In the third place many cars of grain are not consigned to any specific destination until after Government inspection, following which they may be ordered to flour mills. Lastly, grain coming off branch lines is frequently handled by wayfreight and mixed trains along with other local traffic offering. For all these reasons cars of grain are handled in the same manner as cars containing other commodities.

Procedure followed in the development of the
costs of handling grain

The procedures adopted in the cost study were those calculated to give the highest possible degree of realism

in the apportionment of costs to the grain traffic. To achieve this objective, it was necessary to examine in detail the operations and related costs on each sub-division, as well as in each yard. The Department of Research, in conjunction with other departments and with the assistance of experienced operating and engineering officers conducted the field study. By this means a large proportion of the railway operating costs were apportioned to individual sub-divisions and yards so that they could be allocated to the grain traffic with a greater measure of accuracy. This field study also made it possible to develop from a waybill analysis the volume of grain and grain products moved over each sub-division during the year 1948. This procedure was considered more accurate than any statistical division of operating costs as a whole for Western Canada in that, for example, the grain traffic was not charged with any portion of the high costs of operating trains through the southern Crow's Nest route in British Columbia. On the other hand, by the procedure adopted, grain was charged with a portion of the expenses of operating trains over the heavy density line from Winnipeg to Fort William with its low cost of operation, where grain is handled in large volume.

The costs which could not be broken down by sub-divisions and yards were apportioned to the total grain traffic for Western Canada on various service unit bases.

It is not proposed to deal with the details of the calculations, but only to delineate the methods and results of the study. Complete details of the findings are available in the files of the Company.

Volume of Grain Moved During 1948

For purposes of developing the volume of grain and grain products moved over each sub-division, a waybill analysis was made of the number of carloads and total tonnage of grain originating at every station and in such a way as to show a

breakdown by destinations for every station of origin. Operating officers in Western Canada were interviewed by the field staff to determine the routing of this traffic, and special attention was given to sections where alternative routings were available.

By processing the data in the waybill analysis in conjunction with the routing, it was possible to develop the net-ton miles and loaded car-miles of grain moving over each sub-division. At the same time, a separate record was kept of the number of cars originating at, terminating in, and passing through each yard.

The results of the study, in terms of net ton-miles, are shown on the Table at p. 109 of the Appendix in comparison with the total volume of all freight traffic. It may be noted that there are many subdivisions in which the proportion of grain to total traffic volume was in excess of 50 percent.

In addition to road movement, a considerable proportion of traffic in and through the various yards and terminals is comprised of grain. The Table on p. 110 of the Appendix has been prepared to show the number of cars attributable to the handling of the grain traffic, in these yards.

In terms of total revenue freight traffic on the Prairie and Pacific Regions, grain amounted to 37.4 percent of the revenue ton-miles, 30.2 percent of the gross ton-miles in revenue service and 25.5 percent of the revenue loaded car-miles during 1948. This large movement involves the services of some time of practically all operating personnel in Western Canada.

For the purpose of comparing the volume of the grain traffic with the total traffic for previous years, the Table at p. 111 of the Appendix has been prepared to show the relationship in terms of revenue ton-miles from 1916 to 1948.

Operating Costs Allocated to the Western Grain Traffic

The operating costs which are allocable to the handling of grain in Western Canada as developed in the study amounted to \$32,955,695 or .62¢ per revenue ton mile in 1948.

The costs so allocated were not merely the out-of-pocket costs in the short term sense in which that expression is used because an allocation on the basis of out-of-pocket costs in the short term sense is not, in the view of Canadian Pacific, applicable to grain traffic within Western Canada. This will be plain as the submission develops.

The basic concept under which the handling of traffic on the basis of out-of-pocket costs, or something more than out-of-pocket costs, is valid only on the assumption that there is unused capacity in the railway plant and that it is better to make use of that unused capacity if something can be contributed to the overall costs of railway operation in addition to the actual additional costs incurred in the handling of the additional traffic. There is, of course, always some unused capacity in a railway plant. It would be impossible to assume, in the very nature of things, that this would not be so in certain areas as a result of seasonal fluctuations in traffic, an unbalanced flow of traffic in one direction or the other or for other reasons. Thus it would be possible to apply such a concept to movements of relatively small volume. On the other hand, it could never be argued or assumed that traffic of such volume as the Western grain traffic could be handled without provision of facilities designed to handle it.

The application of out-of-pocket costs must also be considered in relation to two quite different principles of rate making. These are the "cost of service" principle, by which is meant the fully distributed all-inclusive cost of providing service, and the "value of service" principle.

Under the "cost of service" principle, each class of

traffic must bear the total cost of carrying it. Under the "value of service" principle, it is recognized that the ability of certain traffic to bear its full costs is limited and that in some circumstances if the full costs were assessed against it, such traffic would not move. This principle, therefore, recognizes that the ability of traffic to bear rather more than its fully distributed all-inclusive cost shall be utilized to charge that traffic more than the fully distributed inclusive cost attributable to that traffic.

Under the "cost of service" principle in rate making, therefore, the carrying of traffic at out-of-pocket cost or slightly more than out-of-pocket cost is justified only to the extent that increments of traffic can be handled without adding to plant capacity. By contrast, the "value of service" principle requires that rates based on out-of-pocket costs are justified only on the theory that increments of traffic are thereby obtained that would not move at rates based on the fully distributed railway costs.

Quite obviously the grain traffic is of such magnitude as to require substantial facilities that would not otherwise be necessary. It is beyond question that many of the railway facilities in Western Canada, and this is particularly true in the case of branch lines, were built to develop and serve agricultural communities whose economy is based primarily on the production and marketing of grain. It follows that the grain traffic cannot be regarded as an increment to fill out unused railway capacity but rather as the solid core of traffic which justified the construction of the railway in the first instance and certainly was the principal reason for its branch line development and is a major factor to justify its continuance. Although grain and grain products now constitute a smaller proportion of total traffic than in former years, it is still a very important proportion of the total traffic. Ordinary business judgment would most certainly brand as imprudent any

suggestion that 37.4 percent of the Company's service in Western Canada could be conducted on an out-of-pocket basis.

The "value of service" principle in its most extreme form requires at least some contribution toward general overhead in addition to out-of-pocket costs. As shown above, this is only justified if the traffic is a small proportion of the total and uses capacity which would otherwise be left idle. The grain traffic cannot be brought under this segment of the general theory on the ground that carrier competition compels such rates; nor can it be assumed that the traffic would dry up if asked to bear a fully remunerative rate. No doubt some allowance must be made for differences between the two areas, but it is still a fact that spring wheat is produced in large volume in the adjacent States of the United States, and hauled to market over comparable distances at rates which are two and one-half to three times as high as the present Crow's Nest Pass grain rates.

Attention is drawn to grain prices which, as shown elsewhere in this submission, not only have fluctuated to a far greater extent than the charges for rail transportation of grain but have substantially increased since the Crow's Nest grain rates were established. If, nevertheless, at any time the grain growing industry in the West cannot meet its fully distributed transportation costs, there being no carrier competition to justify a lower basis of rates, any subsidy required as a matter of national policy should be paid directly to the industry by the Government and should not be attempted through the medium either of depressed freight rates or of a transportation subsidy. On the theory, however, that your Commission would, as a matter of information, desire to have some idea as to what are the out-of-pocket costs of handling the grain traffic within Western Canada, Canadian Pacific has made a calculation. It must, however, be borne in mind that the only way in which the popular conception of the out-of-pocket cost theory could be applied in

relation to the grain traffic in Western Canada would be to estimate the extent to which costs in the short term would be reduced if the grain traffic were not handled. In making such an estimate it has to be assumed that a certain proportion of railway operating costs are constant and that the remainder vary directly with the volume of traffic.

The Interstate Commerce Commission in its most recent study made in October 1948 concluded that on the average the variable costs of railways in the United States constitute from 80% to 90% of operating costs. (See Page 89 - Explanation of Rail Cost Finding Procedures and Principles Relating to the Use of Costs. Statement No. 2 - 48, published by Interstate Commerce Commission)

It is admitted, however, that on a railway or region of a railway where there is a large proportion of thin density lines, as in Western Canada, the percentage of costs variable with traffic might be somewhat less even than the minimum of 80% found by the Interstate Commerce Commission in the case of the United States railways. The reason for this is that on thin density lines the level of costs for maintenance of way and structures is determined more by the minimum standards required to keep the lines serviceable and less by the volume of traffic. When traffic falls off there is also less opportunity on thin density lines for reducing other operating costs owing to the fact that service requirements set a minimum for frequency of trains in excess of that justified by volume of traffic.

In the light of the foregoing, the costs variable with traffic in Western Canada might be taken as 70 percent of the total operating costs. On this basis, the out-of-pocket costs allocated to the handling of grain and grain products in 1948 would be \$23,068,987 or 0.44 cent per revenue ton mile.

As previously stated, however, this calculation of out-of-pocket costs can only be regarded as an estimate of the costs which in a short term would be saved if the grain

traffic were not handled. It is not an estimate of reductions in costs which would take place over the long term if the grain traffic were to disappear permanently and not be replaced by other traffic. Canadian Pacific did not in its study attempt to forecast what would happen in such an event, but it is probable that drastic changes in the railway plant would result. These would include the abandonment of branch lines, double track and other facilities, large retirements of equipment, reduction in the size of yards and terminals and reductions in train service, as well as a general contraction of operations in Western and even in Eastern Canada. With these considerations in mind, it must be apparent that, over the long period, the real out-of-pocket costs for the grain traffic in Western Canada are not less than the fully distributed costs, which for the year 1948 are allocated as follows:

A. Allocated to sub-divisions:

Maintenance of Track	4,731,448
Locomotive Repairs	1,438,544
Locomotive Depreciation	332,958
Freight Car Repairs	2,321,647
Freight Car Depreciation	1,275,270
Train Fuel	3,377,754
Enginemen	1,489,733
Trainmen	1,606,414
Water for Train Locomotives	210,614
Lubricants and Other Locomotive Supplies	85,092
Train Supplies and Expenses	606,385
Enginehouse Expenses	638,312
Assisting on Road by Yard Locomotives	67,937
Sub-total	\$18,182,108

B. Allocated to Yards:

2,413,971

C. Other Expenses:

Maintenance of Way and Structures other than Track (including depreciation)	2,705,782
Station employees and expenses (excl. freight shed costs)	1,747,808
Despatching trains	208,438
Grain door expense	436,689
Loss and damage claims - grain	151,660
Pensions and Unemployment insurance	817,195
Portion of costs of handling non-revenue traffic such as non-revenue coal, grain doors, etc.	3,706,104
Other transportation and maintenance of equipment expenses	1,020,447
Traffic expenses	477,976
General expenses (excluding pensions)	264,264
Provincial, Municipal and Other taxes (excluding Dominion and Provincial Income taxes)	375,605
Joint Facility Rents	29,340
Total	22,487,806

Per Revenue Ton Mile

0.02

In allocating the costs as tabulated in the foregoing statement, it was necessary to adopt different procedures, depending upon the nature and purpose of the operations covered by the expense in each primary account. The items in the statement have been grouped generally according to the methods used in the allocation.

The expense accounts have been restated to reflect for the full year (1948) the wage award effective March 1st of that year. No adjustment was made for changes in the price of materials although there were substantial increases in prices during that year (See transcript 20% Case, p. 580 and Ex. (49)-21 and (49)-34).

Group A - Items allocated to subdivisions.

In some cases, such as the cost of Train Fuel, and wages of Enginemen and Trainmen, the breakdown to subdivisions was possible through the separation of costs existing in the accounting records. In other cases, the breakdown was made by using formulae based on freight car-miles, locomotive-miles and other service units. For maintenance of track, the costs were apportioned to subdivisions on an equated track mile basis. Costs were broken down as between freight services and passenger train services either before or after allocation to subdivisions. The total freight costs thus developed for each subdivision were apportioned to grain on the basis of gross ton miles and freight car miles. Further details of the methods used may be found in the Table at p. 112 of the Appendix.

Group B - Items allocated to yards.

The total yard costs were broken down by yards for each primary account. For most accounts the breakdown was possible by direct assignment. In some cases, allocation was made by the use of service units such as engine hours. The total costs developed for each yard were apportioned to the grain traffic on the basis of yard engine hours. Further details of the apportionment may be found in the Table at p. 113 of the Appendix.

Group C - Other Expenses

These are the expenses which were not broken down by subdivisions or yards because it was not feasible to do so or because such a procedure would not contribute to greater accuracy in the development of the cost. The procedure in most cases, was, first, to apportion the total cost between freight and passenger services and then to apportion the freight portion to the grain traffic as a whole on the basis of gross ton miles. In the cases of grain door expense and loss and damage claims, however, the costs were assigned direct. Further details of the allocation may be found in the Table at p. 114 of the Appendix.

Other Considerations

In addition to the foregoing operating costs, there are other cost elements which must be taken into consideration to gain a realistic appreciation of the costs of transporting grain and grain products.

Return on investment:

The expenses as allocated make no provision for a return on investment in railway property. In any economic enterprise, the wages of capital are as true an element of costs as labour, material and taxes. The enterprise is not in a sound position unless the rate of return on its investment is sufficient to attract capital in the amounts required, properly distributed as between fixed interest obligations and equity stock. Expert opinion was submitted in evidence in the 20% Case that the rate of return on Canadian Pacific net depreciated investment in railway property should be from $6\frac{1}{2}$ to 8.2 percent. The judgment of the Board of Transport Commissioners in the 21% Case allowed an amount for fixed charges, dividends and surplus equivalent to 5.2 percent on the depreciated investment in Canadian Pacific railway property.

On the basis of the 5.2 percent awarded by the Board of Transport Commissioners in the 21% Case, the 1948 allocation to grain traffic in Western Canada for return on investment would

have been \$6,121,318 or .12 cents per revenue ton mile. Canadian Pacific believes that under present conditions 5.2 percent does not represent an adequate rate of return although in the recent majority Judgment of the Board it was found that the 1947 deficiency (as adjusted by such Judgment) would require a general increase in freight rates of only 15%. After making adjustments in the Company's books to follow the computations used in the Judgment, the result would have been a rate of return on investment of 4.9%. Using this percentage, the 1948 allocation to the grain traffic in Western Canada for return on investment would be \$5,766,164 or .11¢ per revenue ton mile.

However, it is recognized that in the case of the grain traffic, value of service considerations might suggest that the grain traffic should not make its full contribution to the return on investment but should instead contribute on the net investment in facilities required in its movement, not less than the cost to the Company of its debt capital which in 1948 was 3.58%. On this basis the allocation to the grain traffic would be \$4,211,767 or .08 cent per revenue ton mile. It is submitted that this is the minimum allocation that should reasonably be allowed. A statement showing the method followed in allocating interest charges to the grain traffic is given in the Table at p. 115 of the Appendix.

The Effect of Peak Loads on Costs:

Costs of most businesses can be divided into those which arise from the use of the invested capital of the business and those which are assignable to the immediate effort expended in producing the particular units of output. The distinction is relatively minor in many businesses but is major when the capital investment per dollar of annual sales is very heavy as, for example, in the case of railways and electric light and power companies.

This distinction is specially important in relation to those users of the services of heavily capitalized industries who contribute to the peak demand. Those whose business helps to create the peak compel an enlargement in the capital investment in order to give service. This fact is of major importance. It also involves a larger operating establishment which the firm must either freshly recruit and train each year as the peak approaches, or the working force must be kept in being throughout the year at a cost greater than the service given in the slack periods would justify.

The same argument applies, with minor changes, to the intermittent user as against the continuous user. A heavy capital investment must be maintained for his service even though his use is not continuous. Therefore, if it is not possible to average out the demands of many intermittent users so as to get a relatively uniform load factor, it may be necessary to assess these costs against such users.

This argument is accepted and applied in the rate structure of the electric light and power industry. Off-peak power is sold at a price which will cover full user cost plus something toward the capital cost of the business. Domestic consumers are charged relatively higher rates because of their intermittent use but they are given incentive rates to encourage them to increase their demand and, by increasing it, to extend it through the day rather than to concentrate it in a few of the early evening hours.

This principle is not only applied in the electric light and power industry with the full approval of regulatory boards, it is also recognized by economic theorists as based upon the cost and not upon the value of service. A. C. Pigion, who is recognized as one of the most rigid proponents of pricing upon a pure cost basis, has explicitly accepted it as such. (See his Economics of Welfare, London: MacMillan, 1920, p. 260).

The reasoning stated above applies equally to the grain traffic of Western Canada. Superimposed upon the other traffic in the late fall months it produces the peak load of the Western Regions of Canadian railways. It involves a very substantial capital investment. Therefore, in logic, it should carry the full share of capital costs which its existence compels. It will be recognized, therefore, that the failure to allow for these special peak-load costs in finding the average cost of handling the grain traffic may be praiseworthy as an act of conservatism in attempting to keep the cost figure as low as possible; but, logically, it stands on very doubtful ground.

Contribution to Passenger Deficit:

In the calculations made, the passenger portion of the expenses was eliminated in a manner comparable to that used in recent presentations before the Board of Transport Commissioners. The apportionment of the expenses to passenger train service in Western Canada during 1948 has shown a deficiency of revenues under expenses for this service of \$18,555,654. Details of results of the apportionment may be found in the Table at p.116 of the Appendix, from which it appears that passenger train revenues nearly cover transportation costs and maintenance of equipment expenses assignable to passenger train services, but they make no contribution toward maintenance of way and structures or to general overhead. It is recognized that this condition is not unusual among railroads on this continent and that this deficiency in the contribution of passenger train revenues must be made up from freight revenue.

There is every justification for grain bearing a fair portion of the deficiency of passenger train service revenue because the passenger trains operate over and provide service to the same communities as the grain traffic. If the deficiency on passenger train service were charged to the grain traffic on the ratio of gross ton miles of grain traffic to gross ton miles

of all revenue freight traffic, there would be an additional assessment of \$5,603,808, or .11 cent per revenue ton-mile for the year 1948.

Miscellaneous:

Owing to seasonal fluctuations in the volume of grain handled, there is a peak demand for cars in the months of September, October and November. This means either that surplus of cars above normal requirements must be carried in the inventory to handle the peak demands of the grain traffic or that cars required for other traffic are used to handle the grain resulting in some of this other traffic of a more lucrative character being lost to competing carriers. The costs as allocated do not cover the costs of maintaining extra cars for seasonal peaks and make no allowance for loss of revenue through inability to handle all of the other traffic offering during the period of maximum grain movement.

Summary of Cost Analysis

In view of the fact that total railway requirements should, in the end, be derived from railway revenues and must therefore be reflected in the rate structure, it may be helpful at this point to summarize the cost factors related to the handling of grain and grain products in Western Canada as analyzed in the foregoing section.

	<u>Amount</u>	<u>Per Revenue Ton-mile</u>
Operating costs, allocated to the grain traffic	\$32,955,695	.62¢
Reasonable contribution to cover deficiency in revenues from passenger train service	5,603,808	.11
Miscellaneous	Not estimated	-
Minimum contribution to return on investment in facilities maintained for grain traffic in Western Canada	<u>4,211,767</u>	<u>.08</u>
	<u>\$42,771,270</u>	<u>.81¢</u>

In developing the figures used in this analysis, wherever there was any reasonable doubt as to the amount which should be

allocated to the grain traffic, the methods used were those which would result in the more conservative figure. For example, the charge to the grain traffic for the return movement of empty cars was made on the assumption that the grain traffic should bear equally with all other freight traffic the cost of moving empty box cars. In actual practice, the grain traffic creates a greater than average empty movement, thus the assessment in the study was made on a conservative basis. Moreover, Dominion and Provincial income taxes have not been taken into account. Only partial provision has been made for return on investment. No assessment is made for loss of more compensatory traffic through using freight equipment for handling grain in peak periods.

Revenues from Grain Traffic

The total revenue from grain and grain products in Western Canada in 1948 amounted to \$29,128,974, or .55¢ per revenue ton-mile. It is pointed out that this figure includes the revenue from all movements of grain and grain products, a portion of which is not subject to the Crow's Nest rates but moves at local or international rates which are on a higher basis than the Crow's Nest level. Actual figures showing the revenue from grain moving at Crow's Nest rates are not available without exceedingly minute examination of individual shipments. It is clear, therefore, that the revenue received from the Crow's Nest Pass grain traffic is something less than the .55¢ per revenue ton-mile. On the other hand, the cost study was similarly unable to separate the costs of handling Crow's Nest Pass grain from domestic grain in Western Canada. It is unlikely, however, that the cost of handling domestic grain is very different from the cost of handling grain moving at Crow's Nest Pass rates. The important difference exists therefore in the revenue.

In order to measure the extent to which the revenue of .55¢ per ton-mile on grain traffic exceeds the revenue from

traffic carried at Crow's Nest Pass rates, a calculation was made by taking representative shipping points on each subdivision covered by the cost analysis and calculating the arithmetical average of the revenue which would be derived from shipments from each of these points. It is true that by using an arithmetical average the result is not weighted to reflect the variation in volume from the different points. The unweighted arithmetical average indicates that the revenue from Crow's Nest Pass grain is only $.49\text{¢}$ per ton mile.

On the basis of revenue from all grains, the deficiency of revenue amounted to $.26\text{¢}$ ($.81\text{¢}$ less $.55\text{¢}$) per revenue ton-mile times 5,296,000,000 revenue ton miles, that is, a total of \$13,769,000. As pointed out above, however, the revenue of $.55\text{¢}$ per revenue ton-mile includes revenue from local and international grain movements which move at rates higher than the Crow's Nest Pass basis. Using the unweighted arithmetical average referred to above, the deficiency of revenue would amount to $.32\text{¢}$ ($.81\text{¢}$ less $.49\text{¢}$) per revenue ton-mile times 5,296,000,000 revenue ton-miles, that is, \$16,947,000. Therefore, while the exact dollar deficiency from Crow's Nest grain in Western Canada is not available, it will be seen that it is somewhere between \$13,769,000. and \$16,947,000.

Summary

The submissions of Canadian Pacific on this matter may be summarized briefly as follows:-

1. In fairness and equity, these rates should be regulated in the same way and by the same tribunal as rates on other traffic.
2. The level of grain rates in Western Canada is less than half that for comparable movements of grain in the Western United States.
3. Under present conditions, the "Crow's Nest" level of grain rates is not compensatory.
4. If, as a matter of national policy, the grain growing industry in Western Canada should at any time require to be subsidized, the subsidy should be paid directly to the industry by the Government of Canada out of general tax monies.

5. The price of grain in Western Canada has more than doubled since the present "Crow's Nest" basis of rail freight rates was established. It is sound economics that these rates be permitted to find their proper level in accordance with changed conditions.
6. The Crow's Nest rates are a pure historical survival. They are not related either to the cost of service nor to the value of service. Changes which have occurred since they were introduced have made them totally obsolete and their effect upon the railways and upon the rates charged on other traffic make it dangerous to retain them.

Canadian Pacific would not expect, nor would they ask for, rates as high as obtain in Western United States for the same or similar distances.

Canadian Pacific is, however, strongly of the opinion that, in fairness to the shippers and receivers of all traffic, one class of traffic in one section of the country should not reasonably expect to receive preferred treatment at the expense of other classes of traffic.

In seeking the repeal of the provisions of the Railway Act respecting rates on grain and grain products in Western Canada, it does so in order that the Board of Transport Commissioners may have jurisdiction over all freight rates in Canada, without exception, and that a more equitable distribution of the transportation burden may be achieved.

Before fixing the rates on grain and grain products in Western Canada, Canadian Pacific would expect a most thorough and detailed study by the Board. In developing the cost of handling grain in Western Canada Canadian Pacific has voluminous working papers. These can be made available to the Commission if desired, and of course, would be available to the Board on any study that they may undertake.

OUTLING SUBMISSION

"82. Canadian Pacific submits that a recommendation should be made that Section 831 of the Railway Act should be amended so that the rates to be charged for the movement of His Majesty's mail, His Majesty's naval or military forces or militia and all artillery, ammunition, provisions or other stores for their use, and all policemen, constables or other travelling on His Majesty's service, shall be levied within the jurisdiction of the Board of Transport Commissioners. An appropriate amendment should also be recommended to section 80 of the Post Office Act."

FURTHER SUBMISSIONS

Canadian Pacific submits that a recommendation should be made that Section 351 of the Railway Act and Section 80 of the Post Office Act be amended by striking out of each section the words "on such terms and conditions" in the second to last line of each section, and adding at the end of the section the words "on such terms and conditions as may be made from time to time by the Board of Transport Commissioners for Canada".

The present sections are as follows:

Railway Act

351. His Majesty's Mail, His Majesty's naval or military forces or militia, and all artillery, ammunition, provisions or other stores for their use, and all policemen, constables or others travelling on His Majesty's service shall, at all times when required by the Postmaster General of Canada, the Minister or Deputy Minister of National Defence, or any person having the superintendence and command of any police force, respectively, be carried on the railway, and with the whole resources of the company if required, on such terms and conditions and under such regulations as the Governor in Council makes.

Post Office Act

80. Canada mail and persons travelling therewith on postal service, or any duly accredited official of the Post Office Department of Canada, shall, at all times when thereunto required by the Postmaster General, be carried on any steamship or steamboat navigating the waters of Canada and on any railway in Canada, and with the whole resources of the railway company if required, on such terms and conditions and under such regulations as are made by the Governor in Council.

Prior to February 1st, 1914, there were no uniform rates for the transportation of Post Office mails by the railways of Canada. On the Canadian Pacific there were rates for car space on various routes, and upon certain parts of the railway the rates were calculated upon a track mile basis.

On February 1st, 1914, under Order-in-Council P.C. 211, approved January 27th, 1914, concurrently with the establishment of the parcel post, the method of pay on all railways in Canada was changed to a space, and car and train mile basis.

Early in the year 1917, the railways made representations to the Postmaster General requesting an increase in rates. The Postmaster General recommended that the question be referred to the Board of Railway Commissioners, and Order-in-Council P.C. 617 - making this reference to the Board - was approved under date of March 7th, 1917. The Board of Railway Commissioners investigated the matter and submitted a report to the Governor in Council under date of July 5th, 1919. However, the recommendation of the Board was not made effective until March 1st, 1921, and the rates established by virtue of it were to have expired on March 1st, 1922, but were extended by Order-in-Council for a further period of three months.

The entire question of Railway Mail Pay rates and regulations had, in the interim, been under investigation by Mr. R. A. C. Henry of the Department of Railway and Canals who had been assigned to the task by mutual agreement between the railway and the Post Office Department. Mr. Henry submitted his report under date of May 30th, 1922, and the rates and conditions presently in effect are those established by Order-in-Council P.C. 1896, dated September 13th, 1922, effective June 1st of that year, based on Mr. Henry's recommendations.

Under date of September 9th, 1929, the Railway Association of Canada, on behalf of all the steam railways of Canada, submitted application to the Postmaster General for an

increase in railway mail pay rates. At p. 117 of the Appendix will be found a copy of the letter from the General Secretary of the Railway Association of Canada, addressed to the Honourable P. J. Veniot, Postmaster General of Canada, dated September 9th, 1929, submitting the application. There were protracted negotiations between Officers of the Post Office Department and the Railway Association, both on the question of rates and conditions of service, but it was never possible to reach agreement, and the rates established in 1922 have continued to this date.

Under date of November 29th, 1948, the Railway Association of Canada, on behalf of all steam railways, applied for an immediate increase in the rates payable for the transportation of His Majesty's mail (see pp. 118-9 of the Appendix).

This application was supplemented by a further submission under date of May 3rd, 1949 (see pp. 120-1 of the Appendix).

After seven months had elapsed since the application was first presented, it had not been possible to reach any agreement with the Postmaster General. In August it was arranged the matter should be referred to the Board of Transport Commissioners for investigation and informal report to the Postmaster General, who will of course not be bound by the Board's finding.

The service performed by the railways for the Post Office Department is comparable in many respects to the transportation of goods for the general public. The Post Office Department, through its parcel post arrangements, is in direct competition with the express companies of the railways for small package traffic, but while the rates of the express companies are subject to the regulation and approval of the Board of Transport Commissioners, the Postmaster General is enabled to secure transportation of all mail matter, including parcel post shipments, at rates established by Order-in-Council under provisions of the Railway and Post Office Acts, without the

control or approval of any regulatory tribunal.

It is manifestly unfair to the railways that they should be subjected to long delays in the matter of railway mail pay rates and regulations. The employees of the Post Office Department are not equipped by knowledge or experience to evaluate the cost to the railways of providing mail transportation, and the determination of fair and reasonable rates should be the duty and responsibility of a neutral authority. In that connection reference is made to a letter from the Postmaster General to the Chief Commissioner of the Board dated 9th September, 1949, in which he said:-

"Naturally, the officials of my Department are not intimately versed in the complexities of the factors governing railway rates and, therefore, I feel sure that the assistance and advice of your experts would be of great help in our endeavour to arrive at a common understanding on which I could base a recommendation to my colleagues."

In a letter dated 10th September, 1949, to the Railway Association of Canada the Postmaster General stated:-

"It is generally admitted that the question of mail conveyance rates cannot be dealt with in isolation from freight and other rates. Further, there are so many ramifications that the question is one of great complexity, calling for expert advice and assistance. It is with this in mind that I have asked the Chief Commissioner to have the data reviewed by the officers of the Board, who have expert experience and knowledge in matters of this kind."

If mail rates were under the jurisdiction of the Board, which is admittedly equipped to deal effectively with such matters, unnecessary delay and wasted effort would be overcome. It is respectfully submitted, therefore, that these matters should be subject to regulation and approval of the Board of Transport Commissioners in the same manner as are other railway transportation rates and that the Postmaster General should be bound by the findings of the Board.

The Interstate Commerce Commission is empowered by legislation to fix and determine, from time to time, the fair and reasonable rates and compensation for the transportation of Post Office mails by railway common carriers in the United States.

United States:

Prior to 1916 the carriage of mails in the United States was upon a weight basis, the weights being determined by tests every four years.

The space base system, similar in principle to that in effect in Canada, was inaugurated by an Act of Congress dated July 28th, 1916, 39 Stat. 412, 425, 431, which Act also empowered and directed the Interstate Commerce Commission:-

"To fix and determine from time to time the fair and reasonable rates and compensation for the transportation of such mail matter by railway common carriers and the service connected therewith, prescribing the method or methods by weight or space or both or otherwise for ascertaining such weight or compensation and to publish the same; and orders so made and published shall continue in force until changed by the Commission after due notice and hearing."

Pursuant to the Act, the Interstate Commerce Commission instituted an exhaustive investigation and submitted a report in 1919 establishing what it regarded as fair and reasonable rates for the various units of service from November 1st, 1916, to January 1st, 1918, and rates on and after January 1st, 1918, that were approximately 25% in excess of those in effect prior to that date.

The New England lines, in February, 1921, filed an application with the Interstate Commerce Commission to re-examine the facts and circumstances surrounding the transportation of mails on their lines, maintaining that the rates prescribed

in the Order of the Commission in December, 1919, for general application to all carriers, were inadequate with respect to the New England rates because of the alleged relatively higher operating costs of mail service in that territory. The Commission investigated the matter, and an Order dated December 23rd, 1923, granted the New England lines a further increase of approximately 35% effective with the date of the Order.

In May, 1925, the United States lines petitioned the Interstate Commerce Commission for a re-examination of the rates and conditions of service, and applied for an increase in mail rates of 40%.

After several hearings on the question, the Interstate Commerce Commission rendered judgment under date of July 10th, 1928, granting an increase in the rates of 15%, retroactive to the date of the application, May, 1925, and a new scale of rates, effective August 1st, 1928, which were, in varying degrees, approximately 15% higher than the rates prevailing prior to May, 1925.

These rates continued until February 19th, 1947, when the United States railways petitioned the Interstate Commerce Commission for an increase of 45% in the prevailing rates, and by decision dated December 4th, 1947, the Commission granted an interim increase of 25%, retroactive to the date of the application, February 19th, 1947.

A supplementary petition was filed by the railways on June 24th, 1948, increasing their original request for improved mail rates from 45% to 65%. A further petition was filed March 24th, 1949, for an additional 15%, bringing the extent of the railways' application to 80% in excess of the rates in effect prior to the original application dated February 19th, 1947.

Also, on March 31st, 1949, the railways submitted application for a 35% additional interim increase for transporting the mails, pending final decision of the Commission in the matter of the rate increase applications previously presented.

The entire matter is still before the Interstate Commerce Commission.

The history of mail pay rates, both in Canada and in the United States, and the manner in which such rates are fixed, support the submission of Canadian Pacific for the amendments proposed to the Railway Act and the Post Office Act.

His Majesty's Forces and Stores:

Rates charged for the movement of His Majesty's naval or military forces or militia and all policemen, constables or others travelling on His Majesty's service, are fixed by negotiation with the departments of the Government concerned. In the past, such rates have followed the increases and decreases for passenger fares ordered by the Board of Transport Commissioners. It is submitted, the only effect of the present restriction in the Railway Act is to delay the application of increases to the movement of persons travelling on behalf of His Majesty.

Similarly, rates charged for the movement of all artillery, ammunition, provisions or other stores for the use of His Majesty's naval or military forces or militia vary with increases or decreases in general freight class rates ordered by the Board of Transport Commissioners. In regard to ammunition, stores, etc., of His Majesty, the manner in which rates are fixed results from an agreement between the railways and the Department, the effect of which is that such rates are, to all intents and purposes, now under the jurisdiction of the Board by agreement of the parties, rather than by the statute. It is submitted, therefore, that there should be no objection to regularizing the agreement now in effect by placing such rates under the jurisdiction of the Board.

OUTLINE SUBMISSION

HIGHWAY TRANSPORTATION

"83. The movement of persons and goods by highway is a public service industry and should, just as railways, be regulated in the national interest. Undoubtedly there is in Canada much uneconomia and therefore wasteful highway transportation which has had a serious effect on railway revenues. Certainly both railway and highway transport have a special aptitude for service in their respective fields; however, the problem is to co-ordinate the two forms of land transport in the public interest.

84. Canadian Pacific adopts and relies upon the Outline Submission of The Railway Association of Canada."

FURTHER SUBMISSIONS

Canadian Pacific adopts and relies upon the Final Submission of The Railway Association of Canada.

OUTLINE SUBMISSION

"85. Canadian Pacific submits that a recommendation should be made that as a first step and in any event Parliament should enact legislation to vest in an administrative tribunal power to control and regulate highway transportation within the jurisdiction of the Dominion."

FURTHER SUBMISSIONS

INLAND WATER AND AIR TRANSPORT

In its outline submission, Canadian Pacific did not make specific reference to inland water transportation or to air transportation. However, a basic concept in the approach of Canadian Pacific to the transportation problem is that transportation, by whatever means must, if it is to be economically justified, create values in service equal to the total costs of providing that service. These total costs should include the costs of construction, maintenance, and operation of transportation facilities whether the facilities are provided by government or by private agencies. The users of transportation should pay for those costs through tolls and charges for services rendered.

In principle this should apply to inland water, air, and

highway transportation as well as to rail transportation.

Operators of inland water transport and of air transport should recover through charges to the users of their services not only their costs of operation, taxes and return on investment, but also the cost of building, maintaining, and operating facilities which are provided for their use by the government. In order for this to be done, it is necessary that the appropriate government departments know what are the true costs of providing, maintaining, and operating these facilities so that tolls or charges may be levied against the transport operators at levels sufficient to recover the costs.

In respect of inland water transport, the facilities provided by the government include canals, harbours, and aids to navigation. In 1903, tolls were abolished for all Canadian canals and have never since been reimposed. These canals are considered as public works to be paid for, maintained, and operated with public funds rather than as self-supporting facilities to be paid for by the transport operators using them. The only revenues derived from canal services are from wharfage, water power rentals, and other incidental sources.

Without attempting an exhaustive analysis, it is possible to obtain from government reports some idea of the extent to which inland water transport is subsidized. Up to March 31, 1948, total government expenditure on capital account for canals was \$243,692,569. In addition, the accumulated deficit on account of maintenance and operation of canals was \$84,326,321. This does not include any charges for interest or depreciation. The total outlay as at March 31, 1948, amounted to \$328,018,890. (Source - Annual Report of Department of Transport).

A better appreciation of the extent to which inland shipping is subsidized at the public expense may be gained by examining the figures on an annual basis and relating the subsidy

to tons of freight handled through the canals. During the ten year period 1939 to 1948 inclusive, the average annual operating deficit, that is, the amount by which expenditures exceeded revenues from the operation of Canadian canals, amounted to \$1,620,742. The average capital investment during this period was \$243,758,295. Taking interest at 3 percent, and depreciation at 2 percent, the carrying charges on this investment would amount to \$12,187,915 annually. On this basis, the total annual deficit during this ten year period averaged \$13,808,657. This amount does not take into account governmental expenditures for aids to navigation and harbour facilities, the benefits of which are shared by inland water transport.

During the ten year period, an average of 21,875,491 tons per annum was carried through the canals (tonnage passing through more than one canal was included in the statistics of each canal through which it passed). Thus, the total deficit on the operation and carrying charges for canals alone averaged 63.1 cents for every ton carried through each canal.

Air transportation is also heavily subsidized at the expense of the tax payer. Here again the government has expended large sums for the construction, maintenance, and operation of facilities, including airports, aids to navigation, meteorological, and allied services. As of March 31, 1948, the Department of Transport investment in air services for civil aviation amounted to \$164,517,426, (Source: Department of Transport Annual Report). Again taking interest at 3 percent, and depreciation at 2 percent, the carrying charges on this investment amount to \$8,225,872 per year. During the fiscal year ending March 31, 1948, the Government of Canada had an operating deficit from airways services of \$9,617,838. The total deficit therefore amounted to \$17,843,710. The ton miles of freight, mail and passengers carried by air during the year were 39,279,838. Thus,

for every ton carried one mile by air the tax payers of Canada contributed on the average, 45.2 cents through subsidies to air transportation. As applied to passengers and taking 10 passengers and their baggage as being equal to one ton, this is equivalent to 4.5 cents per passenger mile. Calculated in the same manner over the ten year period 1939 to 1948 inclusive, the total deficit averaged 44.9 cents per ton mile. These figures do not take into consideration the question as to whether or not air transport is subsidized through payment for the carriage of mail. Insufficient information is available as to the revenues derived from and expenditures incurred for air mail by the Post Office Department to enable an estimate to be made.

Canadian Pacific does not question the wisdom of encouraging the development of civil aviation. Air transportation has an important role to play in the economic life of any modern progressive state. It is urged, however, that the air transport industry be developed along sound economic lines so that as soon as possible it may be self-supporting. Its growth should be governed by the demand for its services and these services should be priced to recover not only the air transport operators' costs but also an increasing proportion of costs incurred by the government in providing and operating facilities in aid of civil aviation.

Canadian Pacific recognizes that considerations of national defence have a bearing upon the policy of subsidizing air transport. Certain facilities used by commercial air transport are also used by or may be required for the use of military air services. Therefore, some of the capital and maintenance costs for facilities may be regarded as joint costs of commercial air transport and national defence air services. Canadian Pacific has no means of determining what these joint costs are or what would be a fair distribution of them. It therefore suggests

that the necessary information might be secured by your Commission so that the true subsidy to air services may be ascertained.

As previously mentioned, it may be claimed that subsidies to air transport have been justified because it was necessary to establish the industry in the national interest. Canadian Pacific submits that the policy of subsidization should gradually give way to a policy requiring commercial air transportation to meet its true costs through charges for services rendered.

As to inland water transport, the policy of subsidization has its roots in history. Whatever justification there may have been in the past for subsidy, Canadian Pacific submits that the justification no longer exists and urges your Commission to recommend that a policy be evolved whereby at the earliest possible date inland water transport will be required to pay for the use of facilities provided by the Government.

Inland water transport on the Great Lakes - St. Lawrence waterway and air transport are within the jurisdiction of the Dominion. Highway transport, on the other hand, is partly within Dominion and partly within Provincial jurisdiction. The Dominion has exercised its jurisdiction over inland water transport through the provisions of the Canada Shipping Act and the Transport Act. It has also legislated with respect to commercial air transportation through the Aeronautics Act. These acts and the regulatory bodies charged with carrying out their provisions do control to some degree air and water commercial services. If these media of transport were paying the true costs of government facilities used by them, the level of their charges for services rendered would determine their economic sphere in the field of transportation.

Although the main factor governing the provision of service should be the natural economic controls imposed by cost of service

and value of service, to the extent that such economic controls need to be supplemented by administrative controls, the administrative controls should be coordinated for all forms of transportation.

Canadian Pacific submits that your Commission should recommend that the administrative tribunals controlling inland water and air transportation should be required before licensing any transportation service to determine whether the service to be provided will be redundant and to consider the effect of such redundancy on the existing forms of transportation.

In the opinion of Canadian Pacific it is difficult to establish either uniformity of regulation and procedure or the true coordination of the various competing forms of transport except by means of a regulatory body with unified control over all forms of transportation and Canadian Pacific accordingly submits that some means should be provided by which this can be brought about. This would not necessarily mean an immediate elimination of such bodies as the Air Transport Board but it is rather intended to suggest that one board with different branches would be superior to several boards functioning independently.

C.F.H. CARSON

F.C.S. EVANS

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MONTREAL, QUE., 12th October, 1949.

